

to away markets on behalf of Members and does so in the same manner to all Members that are subject to routing fees. The costs to the Exchange to route orders to away markets for execution primarily includes transaction fees and rebates assessed by the away markets to which the Exchange routes orders, in addition to the Exchange's clearing costs, administrative, regulatory and technical costs. The Exchange believes that the proposed re-categorization of certain exchange groupings would enable the Exchange to recover the costs it incurs to route orders to Nasdaq MRX. The per-contract transaction fee amount associated with each grouping approximates the Exchange's all-in cost (plus an additional, non-material amount) to execute the corresponding contract at the corresponding exchange.

#### *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. The Exchange believes its proposed re-categorization of certain exchange groupings is intended to enable the Exchange to recover the costs it incurs to route orders to away markets, particularly Nasdaq MRX. The Exchange does not believe that this proposal imposes any unnecessary burden on competition because it seeks to recoup costs incurred by the Exchange when routing orders to away markets on behalf of Members and other exchanges have similar routing fee structures.<sup>11</sup>

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

Written comments were neither solicited nor received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>12</sup> and Rule 19b-4(f)(2)<sup>13</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the

purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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

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

#### *Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-EMERALD-2020-19 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-EMERALD-2020-19. 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-EMERALD-2020-19 and

should be submitted on or before January 7, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2020-27720 Filed 12-16-20; 8:45 am]

**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-90643; File No. SR-CboeEDGX-2020-061]

### **Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Amend Its Fee Schedule With Respect to Qualified Contingent Cross ("QCC") and Solicitation Auction Mechanism ("SAM") Orders**

December 11, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 3, 2020, Cboe EDGX Exchange, Inc. (the "Exchange" or "EDGX") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the 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**

Cboe EDGX Exchange, Inc. (the "Exchange" or "EDGX Options") proposes to amend its Fee Schedule with respect to Qualified Contingent Cross ("QCC") and Solicitation Auction Mechanism ("SAM") orders. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website ([http://markets.cboe.com/us/options/regulation/rule\\_filings/edgx/](http://markets.cboe.com/us/options/regulation/rule_filings/edgx/)), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>11</sup> See *supra* note 4.

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>13</sup> 17 CFR 240.19b-4(f)(2).

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

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

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

#### 1. Purpose

The Exchange proposes to modify the Fee Schedule relating to Qualified Contingent Cross ("QCC") and Solicitation Auction Mechanism ("SAM")<sup>3</sup> orders.<sup>4</sup>

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 options venues to which market participants may direct their order flow. Based on publicly available information, no single options exchange has more than 15% of the market share.<sup>5</sup> Thus, in such a low-concentrated and highly competitive market, no single options exchange possesses significant pricing power in the execution of option order flow. The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain the Exchange's transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. In response to the competitive environment, the Exchange offers specific rates and credits in its fees

schedule, like that of other options exchanges' fees schedules, which the Exchange believes provide incentive to Members to increase order flow of certain qualifying orders.

#### QCC Transaction Fees

By way of background, a QCC order is comprised of an 'initiating order' to buy (sell) at least 1,000 contracts, coupled with a contra-side order to sell (buy) an equal number of contracts and that for complex QCC transactions, the 1,000 contracts minimum is applied per leg. Currently, the Exchange assesses a fee of \$0.08 per contract for Non-Customer Agency and Contra QCC orders and \$0.00 for Customer QCC Agency and Contra orders. The Exchange proposes to amend its fees for orders executed in QCC transactions. First, the Exchange proposes to eliminate transaction fees for Professional Agency and Contra QCC orders. The purpose of the proposed change to waive fees for Professional QCC orders is to incentivize the sending of QCC orders to the Exchange by these market participants and compete with other Exchanges that similarly do not assess fees on Professional QCC orders.<sup>6</sup> In connection with this proposed change, the Exchange proposes to adopt new fee codes QO and QP to apply specifically to QCC Agency and Contra Professional orders, respectively, and amend the description of current fee codes QM and QN to provide it applies to Non-Customer, Non-Professionals. The Exchange next proposes to increase the fees for QCC Agency and Contra Non-Customer, Non-Professional orders from \$0.08 per contract to \$0.20 per contract. The proposed Non-Customer, Non-Professional QCC fee change is also in line with amounts assessed by other exchanges for similar transactions.<sup>7</sup>

#### Agency Orders and Designated Give Up

Footnote 5 of the Fee Schedule currently specifies that when an order is submitted with a Designated Give Up, as defined in Rule 21.12(b)(1), the applicable rebates for such orders when executed on the Exchange (orders yielding fee code BC, NC, PC, SC, QA,

QM, ZA and ZB) are provided to the Member who routed the order to the Exchange. Pursuant to Rule 21.12, which specifies the process to submit an order with a Designated Give Up, a Member acting as an options routing firm on behalf of one or more other Exchange Members (a "Routing Firm") is able to route orders to the Exchange and to immediately give up the party (a party other than the Routing Firm itself or the Routing Firm's own clearing firm) who accepts and clears any resulting transaction. Because the Routing Firm is responsible for the decision to route the order to the Exchange, the Exchange currently provides such Member with the rebate when orders that yield fee code BC,<sup>8</sup> NC,<sup>9</sup> PC,<sup>10</sup> SC,<sup>11</sup> QA,<sup>12</sup> QM,<sup>13</sup> ZA<sup>14</sup> and ZB<sup>15</sup> are executed. In connection with the adoption of a new fee code for QCC Professional orders, the Exchange proposes to add new fee code QO (QCC Professional Agency Order) to the lead-in sentence of footnote 5 and to append footnote 5 to fee code QO in the Fee Codes and Associated Fees table of the Fee Schedule. The Exchange notes that Professional QCC Agency orders are currently included under Footnote 5, albeit represented by fee code QM, which will no longer be appended to Professional QCC Agency orders.

#### QCC Initiator/Solicitation Rebate Tiers

As noted above, the Exchange operates in a highly-competitive market by which competitive forces constrain the Exchange's transaction fees and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. In response to the competitive environment, the Exchange offers, among other things, tiered pricing which provides Members opportunities to qualify for higher rebates or reduced fees where certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for Members to strive for higher tier levels, which provides increasingly higher

<sup>8</sup> Fee Code "BC" is appended to AIM Agency Customer orders.

<sup>9</sup> Fee Code "NC" is appended to Customer Non-Penny orders.

<sup>10</sup> Fee Code "PC" is appended to Customer Penny orders.

<sup>11</sup> Fee Code "SC" is appended to SAM Agency Customer orders.

<sup>12</sup> Fee Code "QA" is appended to QCC Agency Customer orders.

<sup>13</sup> Fee Code "QM" is appended to QCC Agency Non-Customer orders.

<sup>14</sup> Fee Code "ZA" is appended to Complex Customer (contra Non-Customer), Penny orders.

<sup>15</sup> Fee Code "ZB" is appended to Complex Customer (contra Non-Customer), Non-Penny orders.

<sup>3</sup> SAM is the Exchange's solicited order mechanism for larger-sized orders.

<sup>4</sup> The Exchange initially filed the proposed fee changes on December 1, 2020 (SR-CboeEDGX-2020-058). On December 3, 2020, the Exchange withdrew that filing and submitted this proposal.

<sup>5</sup> See Cboe Global Markets U.S. Options Market Monthly Volume Summary (November 25, 2020), available at [https://markets.cboe.com/us/options/market\\_statistics/](https://markets.cboe.com/us/options/market_statistics/).

<sup>6</sup> See e.g., BOX Options Fee Schedule, Section 1(D), Qualified Contingent Cross ("QCC") Transactions, which provides that no fees are assessed for Customer and Professional Customer QCC transactions. See also NYSE American Options Fee Schedule, Section 1(F), QCC Fees and Credits, which also provides that no fees are assessed for Customer and Professional Customer QCC transactions.

<sup>7</sup> See e.g., Nasdaq ISE LLC Pricing Schedule, Options 7 Pricing Schedule, Section 1, "Crossing Orders", which provides that non-customer, non-professional QCC orders are assessed \$0.20 per contract.

benefits or discounts for satisfying increasingly more stringent criteria. One such example is that the Exchange currently offers QCC Initiator/Solicitation Rebate Tiers under footnote 7, which provide enhanced rebates for qualifying QCC and SAM Agency orders where a Member meets incrementally increasing volume thresholds. Particularly, the Exchange will apply the QCC Initiator/Solicitation Rebate to the Member that submits QCC Agency Orders or Solicitation Agency Orders, including a Member who routed orders to the Exchange with a Designated Give Up, when at least one side of the transaction is of Non-Customer capacity. Currently fee codes QA, QM, SA<sup>16</sup> and SC qualify for these rebates. Currently, Tier 1 provides no rebates for Members that submit qualifying orders (*i.e.*, QA, QM, SA and SC) totaling 0 to 99,999 contracts per month; Tier 2, provides a rebate of \$0.05 per contract for Members that submit qualifying orders totaling 100,000 to 199,999 contracts per month; Tier 3, provides a rebate of \$0.07 per contract for Members that submit qualifying orders totaling 200,000 to 499,999 contracts per month; Tier 4,

provides a rebate of \$0.09 per contract for Members that submit qualifying orders totaling 500,000 to 749,999 contracts per month; Tier 5 provides a rebate of \$0.10 per contract for Members that submit qualifying orders totaling 750,000 to 999,999 contracts per month; and Tier 6, provides a rebate of \$0.11 per contract for Members that submit qualifying orders totaling 1,000,000 or more contracts per month.

The Exchange proposes to amend the QCC Initiator/Solicitation Rebate Tier program by (1) amending the volume thresholds, (2) eliminating Tiers 5 and 6, (3) amending the current rebates and (4) clarifying that the program will apply to new fee code QO which will be appended to QCC Agency Professional orders. The Exchange first proposes to amend the volume thresholds as follows:

- To receive the rebate in Tier 1, a member must submit qualifying orders totaling 0–999,999 contracts per month.
- To receive the rebate in Tier 2, a member must submit qualifying orders totaling 1,000,000–1,999,999 contracts per month.

- To receive the rebate in Tier 3, a member must submit qualifying orders totaling 2,000,000–2,999,999 contracts per month.

- To receive the rebate in Tier 4, a member must submit qualifying orders totaling 3,000,000 or more contracts per month.

The Exchange also proposes to eliminate Tiers 5 and 6 and notes that no Members have historically hit such tiers. The Exchange also proposes to adopt a new rebate structure for Tiers 1 through 4. Particularly, the Exchange proposes to adopt two separate rebates that are available under each tier, depending on the market participants involved in a particular transaction. A qualifying order will receive the rebate under “Rebate 1” if one side of the transaction is of Non-Customer, Non-Professional capacity. A qualifying order will receive the rebate under “Rebate 2”, if both sides of the transaction are of Non-Customer, Non-Professional capacity. Transactions where both sides of the transaction are Customers or Professionals will not receive a rebate. The proposed rebates and corresponding tiers are as follows:

Tier	Volume threshold (per month)	Rebate 1	Rebate 2
1 .....	0 to 999,999 contracts .....	(\$0.14)	(\$0.22)
2 .....	1,000,000 to 1,999,999 contracts .....	(\$0.15)	(\$0.23)
3 .....	2,000,000 to 2,999,999 contracts .....	(\$0.16)	(\$0.24)
4 .....	3,000,000+ contracts .....	(\$0.16)	(\$0.26)

The Exchange is proposing to increase the volume thresholds under the tiers in light of the proposed new (and much higher) enhanced rebates. Particularly, the Exchange believes the proposed thresholds are more appropriate and commensurate with the new proposed rebates. The Exchange notes that it also wishes to provide a lower enhanced rebate where only one side of a transaction is a Non-Customer, Non-Professional, as it receives less revenue as compared to when both sides of a transaction are Non-Customer, Non-Professionals. The Exchange believes the proposed rebates and rebate structure are competitive with rebates offered at another exchange for similar transactions.<sup>17</sup> Additionally, the proposed changes to the QCC Initiator/Solicitation Rebate Tiers are designed to incentivize Members to grow their QCC Initiator and/or Solicitation order flow to receive the enhanced rebates. The

Exchange believes that incentivizing greater QCC Initiator and/or Solicitation order flow would provide more opportunities for participation in QCC trades or in the SAM Auction which increases [*sic*] opportunities for price improvement.

Lastly, in connection with the adoption of a new fee code for QCC Professional orders, the Exchange proposes to add new fee code QO (QCC Agency Professional Order) to the lead-in sentence of footnote 7 and to append footnote 7 to fee code QO in the Fee Codes and Associated Fees table of the Fee Schedule. The Exchange notes that Professional QCC Agency orders already are included under Footnote 7, albeit represented by fee code QM, which will no longer be appended to Professional QCC Agency orders.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,<sup>18</sup> in general, and furthers the requirements of Section 6(b)(4),<sup>19</sup> in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

As stated above, the Exchange operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The Exchange is only one of several options venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. The proposed fee

<sup>16</sup> Fee Code “SA” is appended to SAM Agency Non-Customer orders.

<sup>17</sup> See Box Options Fee Schedule, Section 1(D), which provides a \$0.14 per contract rebate to the

Agency Order where at least one party to the QCC transaction is a Broker-Dealer or Market-Maker (*i.e.*, a non-customer, non-professional) and a \$0.22 per

contract rebate where both parties to the QCC transaction are a Broker-Dealer or Market-Maker.

<sup>18</sup> 15 U.S.C. 78f.

<sup>19</sup> 15 U.S.C. 78f(b)(4).

changes reflect a competitive pricing structure designed to incentivize market participants, including Professionals, to direct their QCC order flow, which the Exchange believes would enhance market quality to the benefit of all Members.

Overall, the Exchange believes that its volume-based tiers for QCC and SAM Agency Orders is consistent with Section 6(b)(4) of the Act in that the proposed fees are reasonable, equitable and not unfairly discriminatory. The Exchange believes that the proposed fees and rebates are reasonable, equitable, and not unfairly discriminatory in that competing options exchanges offer substantially the same fees and credits in connection with QCC transactions as the Exchange now proposes.<sup>20</sup>

#### QCC Transaction Fees

In particular, the Exchange believes the proposal to not assess a fee for Professional QCC orders is reasonable because such market participants would not be subject to any fees for such transactions. The Exchange notes other Exchanges also waive fees for Professional QCC transactions.<sup>21</sup> The Exchange believes the proposed change to increase the fee for Non-Customer, Non-Professional QCC orders is reasonable because it is in line with the amounts assessed for similar orders at other exchanges.<sup>22</sup> Additionally, the proposed rate changes apply uniformly to similarly situated market participants.

#### Professional QCC Agency Orders and Designated Give Up

The Exchange believes that the proposal to add new fee code QO to the lead-in sentence of footnote 5 and to append footnote 5 to fee code QO is a reasonable and equitable allocation of fees and dues and is not unreasonably discriminatory because, as is currently the case pursuant to footnote 5 and Rule 21.12(b)(1), the proposal simply makes

clear that a firm acting as a Routing Firm that routes Professional QCC Agency Orders to the Exchange will be provided applicable rebates, based on the Routing Firm's decision to route the order to the Exchange. Particularly, as noted above, Professional QCC Agency orders were already subject to footnote 5 of the fee schedule, albeit represented by footnote QM.

#### QCC Initiator/Solicitation Rebate Tiers

The Exchange believes the proposed changes to the existing QCC Initiator/Solicitation Rebate Tiers is reasonable because they continue to provide opportunities for Members to receive higher rebates by providing for incrementally increasing volume-based criteria they can reach for (albeit using more stringent criteria, but offering higher enhanced rebates). The Exchange believes the rebate tiers, as modified, continue to serve as a reasonable means to encourage Members to increase their liquidity on the Exchange, particularly in connection with additional QCC and/or Solicitation Agency Order flow to the Exchange in order to benefit from the proposed enhanced rebates. The Exchange believes that incentivizing greater QCC Initiator and/or Solicitation order flow would provide more opportunities for participation in QCC trades or in the SAM Auction which increases opportunities for price improvement. The Exchange also notes that any overall increased liquidity that may result from the proposed tier incentives benefits all investors by offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection. The Exchange again notes that volume-based incentives and discounts have been widely adopted by other exchanges, and believes that the proposed tiers are reasonable, equitable and non-discriminatory because they are open to all Members on an equal basis.

The Exchange believes eliminating current Tiers 5 and 6 is reasonable because the Exchange is not required to maintain these tiers and Members still have the opportunity to receive enhanced rebates under the existing Tiers 1–4. Moreover, no Member has historically achieved these tiers. The Exchange believes the proposal to eliminate these tiers is also equitable and not unfairly discriminatory because it applies to all Members.

The Exchange believes the proposed enhanced rebates are commensurate with the difficulty of the proposed criteria and that the tiers continue to

provide an incremental incentive for Members to strive for higher tier levels, which provides increasingly higher rebates for satisfying increasingly more stringent criteria. As noted above, the Exchange also believes the proposal to adopt two alternative rebates depending on the capacity of the parties to the transaction is reasonable. As discussed, the Exchange wishes to provide a lower enhanced rebate where only one side of a transaction is a Non-Customer, Non-Professional, as these transactions generally generate less revenue as compared to when both sides of a transaction are Non-Customer, Non-Professionals. The Exchange also believes the proposed rebates and rebate structure are competitive with rebates offered at another exchange for similar transactions.<sup>23</sup>

The Exchange believes that the proposed changes to Tiers 1–4 represent an equitable allocation of fees and is not unfairly discriminatory because Members will be eligible for these tiers and the corresponding enhanced rebates will apply uniformly to all Members that reach the proposed tier criteria. The Exchange believes that a number of market participants have a reasonable opportunity to satisfy the tiers' criteria, even as modified. The Exchange notes that currently no Members satisfy any of the Tiers' current criteria. While the Exchange has no way of knowing whether this proposed rule change would definitively result in any particular Member qualifying for the proposed tiers, the Exchange anticipates at least one to three Members meeting, or being reasonably able to meet, the proposed criteria under the rebate tiers. Particularly, the Exchange anticipates at least one firm to satisfy the criteria under each of Tiers 1, 2 and 3; however, the proposed tiers are open to any Member that satisfies the tiers' criteria. The Exchange also notes that the proposed changes will not adversely impact any Member's pricing or their ability to qualify for other rebate tiers. Rather, should a Member not meet the proposed criteria, the Member will merely not receive the corresponding enhanced rebates.

#### 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

<sup>20</sup> See e.g., BOX Options Fee Schedule, Section 1(D), Qualified Contingent Cross ("QCC") Transactions. See also NYSE American Options Fee Schedule, Section 1(F), QCC Fees and Credits and Nasdaq ISE LLC Pricing Schedule, Options 7 Pricing Schedule, Section 1, "Crossing Orders".

<sup>21</sup> See e.g., BOX Options Fee Schedule, Section 1(D), Qualified Contingent Cross ("QCC") Transactions, which provides that no fees are assessed for Customer and Professional Customer QCC transactions. See also NYSE American Options Fee Schedule, Section 1(F), QCC Fees and Credits, which also provides that no fees are assessed for Customer and Professional Customer QCC transactions.

<sup>22</sup> See e.g., Nasdaq ISE LLC Pricing Schedule, Options 7 Pricing Schedule, Section 1, "Crossing Orders", which provides that non-customer, non-professional QCC orders are assessed \$0.20 per contract.

<sup>23</sup> See Box Options Fee Schedule, Section 1(D), which provides a \$0.14 per contract rebate to the Agency Order where at least one party to the QCC transaction is a Broker-Dealer or Market-Maker (i.e., a non-customer, non-professional) and a \$0.22 per contract rebate where both parties to the QCC transaction are a Broker-Dealer or Market-Maker.

necessary or appropriate in furtherance of the purposes of the Act. Rather, as discussed above, the Exchange believes that the proposed change would encourage the submission of additional order flow to a public exchange, thereby promoting market depth, execution incentives and enhanced execution opportunities for all Members. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."

The Exchange believes that the proposed rule change does not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. First, the Exchange notes that the proposed changes apply uniformly to similarly situated Members. The Exchange believes that the proposed changes related to QCC and SAM transactions would not impose any burden on intramarket competition, but rather, serves to increase intramarket competition by incentivizing members, including Professionals, to direct their QCC and SAM orders to the Exchange, in turn providing for more opportunities to compete at improved prices. Additionally, the proposed rule change benefits all market participants as any overall increased liquidity that may result from the proposed fee and tier incentives benefits all investors by offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection.

Next, the Exchange believes the proposed rule change does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As previously discussed, the Exchange operates in a highly competitive market. Members have numerous alternative venues they may participate on and direct their order flow, including 15 other options exchanges. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single options exchange has more than 15% of the market share.<sup>24</sup> Therefore, no exchange possesses significant pricing power in the execution of order flow. Indeed, participants can readily choose to send their orders to other exchanges and off-exchange venues if

they deem fee levels at those other venues to be more favorable. As noted above, the Exchange believes that the proposed pricing rebates under the QCC Initiator/Solicitation Rebate Tiers is comparable to that of other exchanges offering similar QCC functionality. Moreover, 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." The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated as follows: "[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .". Accordingly, the Exchange does not believe its proposed fee change imposes 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*

The Exchange neither solicited nor received comments on the proposed rule change.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>25</sup> and paragraph (f) of Rule 19b-4<sup>26</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the

public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings 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-CboeEDGX-2020-061 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-CboeEDGX-2020-061. 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

<sup>24</sup> See *supra* note 1 [sic].

<sup>25</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>26</sup> 17 CFR 240.19b-4(f).

submissions should refer to File Number SR-CboeEDGX-2020-061 and should be submitted on or before January 7, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>27</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90651; File No. SR-PEARL-2020-33]

### Self-Regulatory Organizations; MIAx PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAx PEARL Equities Fee Schedule To Adopt Connectivity Fees, Port Fees, a Technical Support Request Fee, and Historical Market Data Fee

December 11, 2020.

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 December 3, 2020, MIAx PEARL, LLC (“MIAx PEARL” or “Exchange”), filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### 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 PEARL Equities Fee Schedule (the “Fee Schedule”) by adopting fees applicable to participants trading equity securities on and/or using services provided by MIAx PEARL Equities.<sup>3</sup>

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

On August 14, 2020, the Commission approved the Exchange’s proposal to adopt rules governing the trading of equity securities, referred to as MIAx PEARL Equities.<sup>4</sup> The Exchange launched MIAx PEARL Equities on September 25, 2020. The Exchange proposes to adopt a Definitions section in the Fee Schedule as well as the following fees: (1) Connectivity fees for Equity Members<sup>5</sup> and non-Members; (2) Port fees (together with the proposed connectivity fees, the “Proposed Access Fees”); (3) a Technical Support Request fee; and (4) a fee for Historical Market Data (collectively, the “Proposed Fees”).

The Exchange initially filed the proposal on September 24, 2020.<sup>6</sup> The Exchange withdrew the First Proposed Rule Change on October 5, 2020 and submitted SR-PEARL-2020-19.<sup>7</sup> The Second Proposed Rule Change was published for comment in the **Federal Register** on October 20, 2020<sup>8</sup> and no comment letters were received. Nonetheless, the Exchange withdrew the Second Proposed Rule Change<sup>9</sup> and

now replaces it with this filing to provide further clarification regarding the Exchange’s cost analysis for the Proposed Fees.<sup>10</sup>

MIAx PEARL Equities, as a new entrant into the equity securities marketplace, has only begun generating revenue and has a very low market share. 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 increase meets the requirements of the Act that fees be reasonable, equitably allocated, not unfairly discriminatory, and not create an undue burden on competition among members and markets. The Exchange believes this high standard is especially important when an exchange imposes various access fees for market participants to access an exchange’s marketplace. The Exchange believes that it is important to demonstrate that these fees are based on its costs and reasonable business needs. Accordingly, the Exchange believes the Proposed Fees in general, and the Proposed Access Fees in particular, will allow the Exchange to offset a portion of the expenses the Exchange has and will incur and that the Exchange has provided sufficient transparency (as described below) into how the Exchange determined to charge such fees.

##### Definitions

The Exchange proposes to include a Definitions section at the beginning of the Fee Schedule, before the General Notes section. The purpose of the Definitions section is to provide market participants greater clarity and transparency regarding the applicability of fees and rebates by defining terms used within the Fee Schedule in a single location. The Exchange notes that other equities exchanges include Definitions sections in their respective fee schedules,<sup>11</sup> and the Exchange believes that including a Definitions section in the front of the Fee Schedule makes the Fee Schedule more user-friendly and makes the Fee Schedule more comprehensive.

Unless included in the Definition section, capitalized terms used in the Fee Schedule are defined in the MIAx PEARL Equities Rules. Each of the definitions proposed to be included in

<sup>27</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.

<sup>3</sup> See Exchange Rule 901. The Exchange notes that it submitted a separate filing with the Commission pursuant to Section 19(b)(3)(A) of the Act to establish the Fee Schedule and adopt transaction fees. See Securities Exchange Act Release No. 90102 (October 6, 2020), 85 FR 64559 (October 13, 2020) (SR-PEARL-2020-17).

<sup>4</sup> See Securities Exchange Act Release No. 89563 (August 14, 2020), 85 FR 51510 (August 20, 2020) (SR-PEARL-2020-03) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, To Establish Rules Governing the Trading of Equity Securities) (“Approval Order”).

<sup>5</sup> The term “Equity Member” means a Member authorized by the Exchange to transact business on MIAx PEARL Equities. See Exchange Rule 901.

<sup>6</sup> The Exchange initially filed the proposed fee changes on September 24, 2020 (SR-PEARL-2020-18). See SR-PEARL-2020-18 (the “First Proposed Rule Change”).

<sup>7</sup> See Securities Exchange Act Release No. 90186 (October 14, 2020), 85 FR 66656 (October 20, 2020) (SR-PEARL-2020-19) (the “Second Proposed Rule Change”).

<sup>8</sup> See *id.*

<sup>9</sup> See letter from Chris Solgan, VP, Senior Counsel, the Exchange, dated November 20, 2020, notifying the Commission that the Exchange would withdraw SR-PEARL-2020-19.

<sup>10</sup> In this filing, the Exchange also corrects an error in the earlier filings by replacing references to the term “Priority Purge Ports” with simply “Purge Ports.”

<sup>11</sup> See Cboe BZX Exchange, Inc. Fee Schedule, Definitions section; Cboe BYX Exchange, Inc., Definitions section; Cboe EDGA Exchange, Inc., Definitions section; Cboe EDGX Exchange, Inc., Definitions section.