

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 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>128</sup>

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by March 18, 2022. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by April 1, 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-PEARL-2022-05 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-PEARL-2022-05. 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-PEARL-2022-05 and should be submitted on or before March 18, 2022. Rebuttal comments should be submitted by April 1, 2022.

#### VI. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(3)(C) of the Act,<sup>129</sup> that File Numbers SR-PEARL-2022-05 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>130</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-94284; File No. SR-EMERALD-2022-07]

#### Self-Regulatory Organizations; MIAX EMERALD, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

February 18, 2022.

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 February 9, 2022, MIAX Emerald, LLC ("MIAX Emerald" 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 Emerald Fee Schedule (the "Fee Schedule").

The text of the proposed rule change is available on the Exchange's website at <http://www.miaxoptions.com/rule-filings/emerald>, 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 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 Section 1(a)i) of the Fee Schedule to: (i) Modify the application of the per

<sup>128</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>129</sup> 15 U.S.C. 78s(b)(3)(C).

<sup>130</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.

contract surcharge assessed for Complex Order<sup>3</sup> transactions (the “Complex surcharge”); and (ii) increase the Complex surcharge for Complex Order transactions in Penny and non-Penny Classes (defined below). The Exchange originally filed this proposal on January 31, 2022 (the “First Proposed Rule Change”).<sup>4</sup> On February 9, 2022, the Exchange withdrew the First Proposed Rule Change and submitted this filing for immediate effectiveness.

## Background

The Exchange currently assesses transaction rebates and fees to all market participants, which are based upon a threshold tier structure (“Tier”). Tiers are determined on a monthly basis and are based on three alternative calculation methods, as defined in Section 1)a)ii) of the Fee Schedule. The calculation method that results in the highest Tier achieved by the Member<sup>5</sup> shall apply to all Origin types by the Member, except the Priority Customer<sup>6</sup> Origin type. For the Priority Customer Origin calculation, the Tier applied for a Member and its Affiliates<sup>7</sup> is solely

determined by calculation Method 3, as defined in Section 1)a)ii) of the Fee Schedule, titled “Total Priority Customer, Maker sides volume, based on % of CTCV (‘Method 3’).” The monthly volume thresholds for each of the methods, associated with each Tier, are calculated as the total monthly volume executed by the Member in all options classes on MIAx Emerald in the relevant Origins and/or applicable liquidity, not including Excluded Contracts,<sup>8</sup> (as the numerator) expressed as a percentage of (divided by) Customer Total Consolidated Volume (“CTCV”) (as the denominator). CTCV is calculated as the total national volume cleared at The Options Clearing Corporation (“OCC”) in the Customer range in those classes listed on MIAx Emerald for the month for which fees apply, excluding volume cleared at the OCC in the Customer range executed during the period of time in which the Exchange experiences an “Exchange System Disruption”<sup>9</sup> (solely in the option classes of the affected Matching Engine).<sup>10</sup> In addition, the per contract transaction rebates and fees shall be applied retroactively to all eligible volume once the Tier has been reached by the Member. Members that place resting liquidity, *i.e.*, orders on the MIAx Emerald System, will be assessed the specified “maker” rebate or fee (each a “Maker”) and Members that execute against resting liquidity will be assessed the specified “taker” fee or rebate (each a “Taker”).<sup>11</sup> Members are also assessed lower transaction fees and smaller rebates for order executions in standard option classes in the Penny Interval Program<sup>12</sup> (“Penny Classes”) than for order executions in standard

option classes which are not in the Penny Program (“non-Penny Classes”), for which Members will be assessed a higher transaction fees and larger rebates.

## Proposal To Modify the Application of, and Increase, the Complex Surcharge

The Exchange proposes to amend Section 1)a)i) of the Fee Schedule to: (i) Modify the application of the Complex surcharge; and (ii) increase the Complex surcharge for Complex Order transactions in Penny and non-Penny Classes. Currently, the Exchange assesses a fee of \$0.86 or \$0.88 per contract for all Origins other than Priority Customer for Complex Orders that remove liquidity from the Exchange’s Strategy Book<sup>13</sup> in non-Penny Classes, depending on the Origin and Tier achieved. The Exchange also assesses a Complex surcharge of \$0.05 per contract for all Origins other than Priority Customer for Complex Orders that remove liquidity from the Strategy Book in non-Penny Classes, which is denoted by footnote “~” following the tables in Section 1)a)i) of the Fee Schedule. Currently, the Exchange does not assess a Complex surcharge for Complex Orders that remove liquidity from the Strategy Book in Penny Classes for any Origin.

The Exchange proposes to modify the application of the Complex surcharge in several ways. First, the Exchange proposes that the Complex surcharge will now apply to both Penny and non-Penny Classes, which the Exchange will denote in both the Penny and non-Penny Class tables of transaction fees and rebates in Section 1)a)i) of the Fee Schedule (described further below). Prior to the First Proposed Rule Change, the Complex surcharge applied only to non-Penny Classes. Second, the Exchange proposes that the Complex surcharge will now apply to both liquidity adding (Maker) and liquidity removing (Taker) Complex Orders for all Origins, except the Priority Customer Origin. Prior to the First Proposed Rule Change, the Complex surcharge applied only to liquidity removing (Taker) Complex Orders. Third, the Exchange proposes that the Complex surcharge will apply to Complex Orders submitted as a Response or unrelated quote or

<sup>3</sup> See Exchange Rule 518(a)(5) for the definition of Complex Order.

<sup>4</sup> See SR-EMERALD-2022-03.

<sup>5</sup> “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 the Definitions Section of the Fee Schedule and Exchange Rule 100.

<sup>6</sup> “Priority Customer” means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). See Exchange Rule 100, including Interpretation and Policy .01.

<sup>7</sup> “Affiliate” means (i) an affiliate of a Member of at least 75% common ownership between the firms as reflected on each firm’s Form BD, Schedule A, or (ii) the Appointed Market Maker of an Appointed EEM (or, conversely, the Appointed EEM of an Appointed Market Maker). An “Appointed Market Maker” is a MIAx Emerald Market Maker (who does not otherwise have a corporate affiliation based upon common ownership with an EEM) that has been appointed by an EEM and an “Appointed EEM” is an EEM (who does not otherwise have a corporate affiliation based upon common ownership with a MIAx Emerald Market Maker) that has been appointed by a MIAx Emerald Market Maker, pursuant to the following process. A MIAx Emerald Market Maker appoints an EEM and an EEM appoints a MIAx Emerald Market Maker, for the purposes of the Fee Schedule, by each completing and sending an executed Volume Aggregation Request Form by email to [membership@miaxoptions.com](mailto:membership@miaxoptions.com) no later than 2 business days prior to the first business day of the month in which the designation is to become effective. Transmittal of a validly completed and executed form to the Exchange along with the Exchange’s acknowledgement of the effective designation to each of the Market Maker and EEM will be viewed as acceptance of the appointment. The Exchange will only recognize one designation per Member. A Member may make a designation not more than once every 12 months (from the date of its most recent designation), which designation shall remain in effect unless or until the Exchange

receives written notice submitted 2 business days prior to the first business day of the month from either Member indicating that the appointment has been terminated. Designations will become operative on the first business day of the effective month and may not be terminated prior to the end of the month. Execution data and reports will be provided to both parties. See the Definitions Section of the MIAx Emerald Fee Schedule.

<sup>8</sup> “Excluded Contracts” means any contracts routed to an away market for execution. See the Definitions Section of the Fee Schedule.

<sup>9</sup> The term “Exchange System Disruption” means an outage of a Matching Engine or collective Matching Engines for a period of two consecutive hour or more, during trading hours. See the Definitions Section of the Fee Schedule.

<sup>10</sup> A “Matching Engine” is a part of the MIAx Emerald electronic system that processes options orders and trades on a symbol-by-symbol basis. See the Definitions Section of the Fee Schedule.

<sup>11</sup> For a Priority Customer complex order taking liquidity in both a Penny class and non-Penny class against Origins other than Priority Customer, the Priority Customer order will receive a rebate based on the Tier achieved.

<sup>12</sup> See Securities Exchange Act Release No. 88993 (June 2, 2020), 85 FR 35145 (June 8, 2020) (SR-EMERALD-2020-05) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change

To Amend Exchange Rule 510, Minimum Price Variations and Minimum Trading Increments, To Conform the Rule 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 “Penny Program”).

<sup>13</sup> The “Strategy Book” is the Exchange’s electronic book of complex orders and complex quotes. See Exchange Rule 518(a)(17).

order in a Complex Order Auction.<sup>14</sup> Prior to the First Proposed Rule Change, the Complex surcharge applied only to liquidity removing Complex Orders that were not part of a Complex Order Auction. Fourth, the Exchange proposes that the Complex surcharge will apply to Complex Orders that are contra to the Priority Customer Origin only. Prior to the First Proposed Rule Change, the Complex surcharge applied to Complex Orders that were contra to any Origin. Fifth, the Exchange proposes to increase the Complex surcharge from \$0.05 per contract to \$0.12 per contract. The Exchange notes that the Complex surcharge will continue to not apply to transactions that are Linkage Trades.<sup>15</sup> Additionally, the Exchange notes that the Complex surcharge will not apply to transactions that are paired trades, such as transactions in cPRIME, which the Exchange proposes to explicitly exclude from the Complex surcharge (denoted in a footnote described below). Accordingly, with all of the proposed changes, the proposed Complex surcharge of \$0.12 per contract will apply to Complex Orders for all Origins except Priority Customer that add (Maker) or remove (Taker) liquidity in Penny and non-Penny Classes when trading against a Priority Customer on the Strategy Book. The Complex surcharge would continue to not apply to the Priority Customer Origin. The Complex surcharge would also apply to all Origins except Priority Customer when trading against a Priority Customer as a Response or unrelated quote or order in a Complex Order Auction,<sup>16</sup> other than a cPRIME auction.<sup>17</sup> The Exchange notes that the proposed application and amount of the Complex surcharge subject to this filing is the same application and amount of the Complex surcharge that is currently assessed by the Exchange's affiliate, Miami International Securities Exchange, LLC ("MIAX").<sup>18</sup> For

example, assuming a Firm Origin Complex Order taking liquidity against (contra) a Priority Customer Origin Complex Order resting liquidity in a Penny Class, MIAX will charge a standard fee of \$0.47 and a Complex surcharge of \$0.12.<sup>19</sup> Similarly, under the proposed fee application and proposed Complex surcharge rate increase, MIAX Emerald would now charge a standard (taker) fee of \$0.50 and a Complex surcharge of \$0.12.

To represent all the proposed changes, the Exchange proposes to add a new column to each table for Penny and non-Penny Classes in Section 1(a)i) of the Fee Schedule, under the "Complex" heading. The Exchange proposes that each new column would be titled "Per Contract Surcharge for Trading Against a Priority Customer Complex Order."<sup>20</sup> In the new column for each table, the Exchange proposes to insert the proposed increased Complex surcharge amount of \$0.12 per contract for all Origins, except Priority Customer, which would be \$0.00 per contract for all Tiers. The Exchange also proposes to move footnote "~" from the "Taker" column in the non-Penny Classes table and insert it at the end of each of the newly proposed column headings for the Complex surcharge, described above. Further, the Exchange proposes to delete the text of footnote "~" in its entirety and insert the following new text for that footnote following the tables in Section 1(a)i) of the Fee Schedule: "The per contract surcharge for trading against a Priority Customer Complex Order for Penny and Non-Penny Classes applies to all Origins except Priority Customer when trading against a Priority Customer: (i) On the Strategy Book; or (ii) as a Response or unrelated quote or order in a complex order auction other than a cPRIME Auction."<sup>21</sup>

As described above, the Exchange proposes to increase the Complex surcharge from \$0.05 per contract to \$0.12 per contract. The Exchange notes that the proposed Complex surcharge rate of \$0.12 per contract is the same amount charged by at least two competing options exchanges with base fee amounts for complex orders of \$0.50 per contract in Penny Classes plus a

against a Priority Customer Complex Order for Penny and Non-Penny classes).

<sup>19</sup> See MIAX Fee Schedule, Section 1(a)iii).

<sup>20</sup> This is similar to how the Complex surcharge is represented in the tables of transaction fees and rebates in the MIAX Fee Schedule. See *supra* note 18.

<sup>21</sup> This is substantially similar language regarding the application of the Complex surcharge that is represented by text below the tables of transaction fees and rebates in the MIAX Fee Schedule. See MIAX Fee Schedule, Section 1(a)iii), at page 4.

\$0.12 per contract complex surcharge, which has similar application methods.<sup>22</sup> Further, the proposed application and increased amount of the Complex surcharge is the same application and amount of the Complex surcharge that is currently assessed by the Exchange's affiliate, MIAX.<sup>23</sup>

The purpose of the proposed changes to the Complex surcharge are for business and competitive reasons. In order to attract order flow, the Exchange initially set its Complex surcharge rate so that it was similar to, or lower, than other options exchanges that operate comparable maker/taker pricing models.<sup>24</sup> The Exchange now believes that it is appropriate to adjust this rate and application so that it is more in line with other exchanges, but will remain highly competitive such that it should enable the Exchange to continue to attract order flow and maintain market share.<sup>25</sup>

## Implementation

The proposed changes are immediately effective.

## 2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act<sup>26</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act,<sup>27</sup> in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange members and issuers and other persons using its facilities, and 6(b)(5) of the Act,<sup>28</sup> in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in facilitating transactions in securities, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in

<sup>22</sup> See NYSE American Options Fee Schedule, Section I.A., footnote 5, page 9 (assessing \$0.12 per contract surcharge to any Electronic Non-Customer Complex Order that executes against a Customer Complex Order, regardless of whether the execution occurs in a Complex Order Auction); BOX Options Exchange Fee Schedule, Section III.A. Complex Order Transaction Fees (noting that a \$0.12 per contract Complex Surcharge will be applied to any electronic non-Public Customer Complex Order that executes against an electronic Public Customer Complex Order, including for Penny Interval Class taker fees with a base fee amount of \$0.50 per contract).

<sup>23</sup> See *supra* note 18.

<sup>24</sup> See Securities Exchange Act Release No. 85393 (March 21, 2019), 84 FR 11599 (March 27, 2019) (SR-EMERALD-2019-15).

<sup>25</sup> See *supra* notes 18 and 22.

<sup>26</sup> 15 U.S.C. 78f(b).

<sup>27</sup> 15 U.S.C. 78f(b)(4).

<sup>28</sup> 15 U.S.C. 78f(b)(1) and (b)(5).

<sup>14</sup> See Exchange Rule 518(d) (describing the Complex Order Auction process). The Exchange notes that the Complex surcharge will not apply to Complex Orders submitted as part of a cPRIME auction. A Complex PRIME or "cPRIME" Order is a complex order (as defined in Rule 518(a)(5)) that is submitted for participation in a cPRIME Auction. Trading of cPRIME Orders is governed by Rule 515A, Interpretation and Policy .12. See Exchange Rule 518(b)(7). "cPRIME" is the process by which a Member may electronically submit a "cPRIME Order" (as defined in Exchange Rule 518(b)(7)) it represents as agent (a "cPRIME Agency Order") against principal or solicited interest for execution (a "cPRIME Auction"), subject to the requirements in Exchange Rule 515A, Interpretation and Policy .12(a). See, generally, Exchange Rule 515A.

<sup>15</sup> See Exchange Rule 521(j).

<sup>16</sup> See Exchange Rule 518(d).

<sup>17</sup> See *supra* note 14.

<sup>18</sup> See MIAX Fee Schedule, Sections 1(a)i)-ii) (assessing a \$0.12 per contract surcharge for trading

general, protect investors and the public interest.

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>29</sup>

There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has a market share of more than approximately 12–13% of the equity options market.<sup>30</sup> Therefore, no exchange possesses significant pricing power. More specifically, as of January 26, 2022, the Exchange had a market share of approximately 3.96% of executed volume of multiply-listed equity and exchange traded fund (“ETF”) options for the month of January 2022.<sup>31</sup>

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can discontinue or reduce use of certain categories of products and services, terminate an existing membership or determine to not become a new member, and/or shift order flow, in response to transaction fee changes. For example, on February 28, 2019, the Exchange’s affiliate, MIAx PEARL, LLC (“MIAx Pearl”) filed with the Commission a proposal to increase Taker fees in certain Tiers for options transactions in certain Penny classes for Priority Customers and decrease Maker rebates in certain Tiers for options transactions in Penny classes for Priority Customers (which fee was to be effective March 1, 2019).<sup>32</sup> MIAx Pearl experienced a decrease in total market share for the month of March 2019, after the proposal went into effect. Accordingly, the Exchange believes that the MIAx Pearl March 1, 2019 fee change, to increase certain transaction fees and decrease certain transaction rebates, may have

contributed to the decrease in MIAx Pearl’s market share and, as such, the Exchange believes competitive forces constrain the Exchange’s, and other options exchanges, ability to set transaction fees and market participants can shift order flow based on fee changes instituted by the exchanges.

The Exchange believes its proposal is reasonable, equitable and not unfairly discriminatory because all similarly situated market participants in the same Origin type (except Priority Customers) will now be subject to the Complex surcharge. The Exchange believes it is equitable and not unfairly discriminatory to increase the Complex surcharge for business and competitive business reasons. The Exchange initially set its Complex surcharge rate similar to, or lower than, the complex surcharges assessed by other options exchanges that operate comparable maker/taker pricing models. The Exchange now believes that it is appropriate to increase the Complex surcharge so that it is in line with other exchanges, and will still remain highly competitive such that it should enable the Exchange to continue to attract order flow and maintain market share.<sup>33</sup> The Exchange believes that the amount of Complex surcharge, as proposed, will continue to encourage market participants to send Complex Orders to the Exchange.

The Exchange believes the proposal to increase the Complex surcharge and broaden its application is consistent with Section 6(b)(4) of the Act<sup>34</sup> because it applies equally to all market participants (Market Makers, Non-MIAx Market Makers, Firm Proprietary/ Broker-Dealers, except Priority Customers) that would be charged such Complex surcharge. Assessing the Complex surcharge to Market Makers and other professional market participants (except Priority Customers), in a broader application, similar to that of other exchanges, is reasonable and not unfairly discriminatory because it will provide Market Makers and other professional market participants with equal surcharges when trading against a Priority Customer Complex Order. As stated above, the proposed Complex surcharge is the same amount as the surcharges assessed by NYSE American Options, BOX Options, and the Exchange’s affiliate, MIAx.<sup>35</sup> The Exchange notes that, although the increase of the Complex surcharge represents a slight fee increase, the Exchange believes that this increase is

fair and equitable because it is in line with the amount of surcharges assessed on other options exchanges when trading against Priority Customer Complex Orders.<sup>36</sup>

The Exchange believes its proposal to apply the Complex surcharge to all Origins, except Priority Customer, is reasonable, equitably allocated and not unfairly discriminatory because it will continue to encourage Priority Customer Complex Order flow. The Exchange believes increased Priority Customer Complex Order flow benefits all market participants by providing more trading opportunities and tighter spreads. The Exchange also believes that increased Priority Customer Complex Order flow may attract Market Makers and other liquidity providers, thus, facilitating price improvement in the Complex Order Auction process, signaling additional corresponding increase in Complex Order flow from other market participants, and, as a result, increasing liquidity on the Exchange.

The Exchange believes its proposal to broaden the application of the Complex surcharge is also consistent with Section 6(b)(5) of the Act<sup>37</sup> because it perfects the mechanisms of a free and open market and a national market system by aligning the broader application of the Complex surcharge to that of other options exchanges,<sup>38</sup> which will help to create consistency and uniformity in the marketplace.

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

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

#### *Intra-Market Competition*

The Exchange believes that the proposed changes to the Complex surcharge should continue to encourage the provision of liquidity that enhances the quality of the Exchange’s Complex Order market and increases the number of trading opportunities on the Exchange for all participants who will be able to compete for such opportunities. The proposed rule changes should enable the Exchange to continue to attract and compete for order flow with other exchanges. The Exchange also believes that its proposal to apply the Complex surcharge to all Origins except Priority Customer will not impose any burden on competition not necessary or appropriate because the

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

<sup>30</sup> See “The Market at a Glance,” (last visited January 26, 2022), available at <https://www.miaxoptions.com/>.

<sup>31</sup> See *id.*

<sup>32</sup> See Securities Exchange Act Release No. 85304 (March 13, 2019), 84 FR 10144 (March 19, 2019) (SR-PEARL-2019-07).

<sup>33</sup> See *supra* notes 18 and 22.

<sup>34</sup> 15 U.S.C. 78f(b)(4).

<sup>35</sup> See *supra* notes 18 and 22.

<sup>36</sup> See *id.*

<sup>37</sup> 15 U.S.C. 78f(b)(1) and (b)(5).

<sup>38</sup> See *supra* note 22.

Exchange believes increased Priority Customer Complex Order flow benefits all market participants by providing more trading opportunities and tighter spreads. The Exchange also believes that increased Priority Customer Complex Order flow may attract Market Makers and other liquidity providers, thus, facilitating price improvement in the Complex Order Auction process, signaling additional corresponding increase in Complex Order flow from other market participants, and, as a result, increasing liquidity on the Exchange.

#### Inter-Market Competition

The Exchange operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has a market share of more than approximately 12–13% of the equity options market.<sup>39</sup> Therefore, no exchange possesses significant pricing power. More specifically, as of January 26, 2022, the Exchange had a market share of approximately 3.96% of executed volume of multiply-listed equity and ETF options for the month of January 2022.<sup>40</sup> Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. In such an environment, the Exchange must continually adjust its transaction and non-transaction fees to remain competitive with other exchanges and to attract order flow. The Exchange believes that the proposed rule changes reflect this competitive environment because it modifies the Exchange's fees for Complex Order transactions in a manner that will allow the Exchange to remain competitive.

#### 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>41</sup> and Rule

19b–4(f)(2)<sup>42</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–2022–07 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–2022–07. 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–2022–07, and should be submitted on or before March 18, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>43</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2022–03963 Filed 2–24–22; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94286; File No. SR–PEARL–2022–04]

### Self-Regulatory Organizations; MIAX PEARL LLC; Notice of Filing of a Proposed Rule Change To Amend the MIAX PEARL Options Fee Schedule To Increase the Monthly Fees for MIAX Express Network Full Service Port; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change

February 18, 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 February 15, 2022, MIAX PEARL, LLC (“MIAX Pearl” 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 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 Pearl Options Fee Schedule (the “Fee Schedule”) to amend the fees for the Exchange's MIAX

<sup>39</sup> See *supra* note 30.

<sup>40</sup> See *id.*

<sup>41</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>42</sup> 17 CFR 240.19b–4(f)(2).

<sup>43</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.