

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-96249; File No. SR-PEARL-2022-47)

November 7, 2022

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the MIAX PEARL Options Fee Schedule to Remove a Monthly Credit Associated with Trading Permit Fees

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 2, 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, 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 Options Fee Schedule (the “Fee Schedule”) to remove a monthly credit associated with Trading Permit (defined below) fees.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 commenced operations in February 2017³ and adopted its initial fee schedule that waived fees for Trading Permits⁴ to trade on the Exchange.⁵ In 2018, as the Exchange's market share increased,⁶ the Exchange adopted nominal fees for Trading Permits based on the type of interface used – MEO⁷ or FIX⁸ – and according to the volume-based tier⁹

³ See MIAX PEARL Successfully Launches Trading Operations, dated February 6, 2017, available at https://www.miaxoptions.com/sites/default/files/alert-files/MIAX_Press_Release_02062017.pdf.

⁴ The term “Trading Permit” means a permit issued by the Exchange that confers the ability to transact on the Exchange. See Exchange Rule 100.

⁵ See Securities Exchange Act Release No. 80061 (February 17, 2017), 82 FR 11676 (February 24, 2017) (SR-PEARL-2017-10).

⁶ The Exchange experienced a monthly average trading volume in equity options of 3.94% for the month of March 2018. See Market at a Glance, available at www.miaxoptions.com (last visited November 2, 2022).

⁷ The term “MEO Interface” or “MEO” means a binary order interface for certain order types as set forth in Rule 516 into the MIAX Pearl System. See the Definitions Section of the Fee Schedule and Exchange Rule 100.

⁸ The term “FIX Interface” means the Financial Information Exchange interface for certain order types as set forth in Exchange Rule 516. See the Definitions Section of the Fee Schedule and Exchange Rule 100.

⁹ The tiers were determined by the defined term “Non-Transaction Fees Volume Based Tiers”. See the Definitions Section of the Fee Schedule.

each Member¹⁰ achieved during the month along with that of its Affiliates.¹¹ At the same time, the Exchange adopted a nominal monthly credit known as the “Trading Permit Fee Credit,” a \$100 per month credit for Members that connected to the Exchange via both the MEO and FIX Interfaces.¹²

The Exchange has two types of Members, Electronic Exchange Members (“EEMs”)¹³ and Market Makers.¹⁴ The Exchange recently filed a proposal with the Commission to amend the calculation and amount of Trading Permit fees assessed to Market Makers, and adopt a flat Trading Permit fee for EEMs, based on the type of interface used, MEO and/or FIX. Pursuant to that proposal, the Exchange moved away from the volume tier-based Trading Permit fee structure for Market Maker Trading Permit fees; instead, Market Makers are assessed Trading Permit fees based upon the number of classes in which the Market Maker was registered to quote on any given day within the calendar month, or upon the class volume percentages set forth in

¹⁰ The term “Member” means an individual or organization that is registered with the Exchange pursuant to Chapter II of Exchange Rules for purposes of trading on the Exchange as an “Electronic Exchange Member” or “Market Maker.” Members are deemed “members” under the Exchange Act. See Exchange Rule 100 and the Definitions Section of the Fee Schedule.

¹¹ See Securities Exchange Act Release No. 82867 (March 13, 2018), 83 FR 12044 (March 19, 2018) (SR-PEARL-2018-07). See the Definitions Section of the Fee Schedule for the definition of “Affiliate.”

¹² See Securities Exchange Act Release No. 82867 (March 13, 2018), 83 FR 12044 (March 19, 2018) (SR-PEARL-2018-07).

¹³ “Electronic Exchange Member” or “EEM” means the holder of a Trading Permit who is a Member representing as agent Public Customer Orders or Non-Customer Orders on the Exchange and those non-Market Maker Members conducting proprietary trading. Electronic Exchange Members are deemed “members” under the Exchange Act. See the Definitions Section of the Fee Schedule and Exchange Rule 100.

¹⁴ The term “Market Maker” or “MM” means a Member registered with the Exchange for the purpose of making markets in options contracts traded on the Exchange and that is vested with the rights and responsibilities specified in Chapter VI of the Exchange Rules. See the Definitions Section of the Fee Schedule and Exchange Rule 100.

the table in Section 3)b) of the Fee Schedule.¹⁵

The Exchange established the Trading Permit Fee Credit to continue to attract order flow and increase membership by lowering Trading Permit costs for Members.¹⁶ The Exchange adopted the Trading Permit Fee Credit to incentivize market participants to trade on the Exchange and help the Exchange's market share grow.¹⁷ This practice is not uncommon. New exchanges often do not charge fees or offer pricing incentives for certain services such as memberships/trading permits to attract order flow to an exchange, and later amend their fees to reflect the true value of those services, absorbing costs to provide those services in the meantime. Allowing new exchange entrants time to build and sustain market share through various pricing incentives before increasing non-transaction fees encourages market entry and promotes competition. It also enables new exchanges to mature their markets and allow market participants to trade on the new exchanges without fees serving as a potential barrier to attracting memberships and order flow.¹⁸ Not allowing exchanges to modify or amend such pricing

¹⁵ See Securities Exchange Act Release No. 95780 (September 15, 2022), 87 FR 57732 (September 21, 2022) (SR-PEARL-2022-39).

¹⁶ See supra note 12

¹⁷ The Exchange experienced a monthly average trading volume in equity options of 4.35% for the month of October 2022. See Market at a Glance, supra note 6 (last visited November 2, 2022).

¹⁸ See Securities Exchange Act Release No. 94894 (May 11, 2022), 87 FR 29987 (May 17, 2022) (SR-BOX-2022-17) (stating, “[t]he Exchange established this lower (when compared to other options exchanges in the industry) Participant Fee in order to encourage market participants to become Participants of BOX...”). See also Securities Exchange Act Release No. 90076 (October 2, 2020), 85 FR 63620 (October 8, 2020) (SR-MEMX-2020-10) (“MEMX Membership Fee Proposal”) (proposing to adopt the initial fee schedule and stating that “[u]nder the initial proposed Fee Schedule, the Exchange proposes to make clear that it does not charge any fees for membership, market data products, physical connectivity or application sessions.”). MEMX has seen its market share increase and recently proposed to adopt a membership fee and fees for connectivity. See Securities Exchange Act Release Nos. 93927 (January 7, 2022), 87 FR 2191 (January 13, 2022) (SR-MEMX-2021-19) (proposing to adopt membership fees);

incentives as their markets mature, especially when other options exchanges do not offer similar incentives, could discourage exchanges from offering such incentives if they believe the Commission would later require that exchange to continue to offer such incentives, like a nominal \$100 credit that is the subject of this proposal, and lower prices than those of its competitor exchanges. In that case, the Commission alone, and not market forces, would dictate exchange pricing.

The Exchange proposes to amend Section 3)b) of the Fee Schedule to remove the Trading Permit Fee Credit that is denoted in footnote “*” below the Trading Permit fee table. During periods when the Trading Permit Fee Credit was in effect (the history of filings to remove the Trading Permit Fee Credit is described below), the Trading Permit Fee Credit was applicable to Members that connected via both the MEO and FIX Interfaces. Members who connected via both the MEO and FIX Interfaces were assessed the rates for both types of Trading Permits, but these Members received a \$100 monthly credit towards the Trading Permit fees applicable to the MEO Interface. The Exchange proposes to remove the Trading Permit Fee Credit and delete footnote “*” from Section 3)b) of the Fee Schedule.

The Exchange established the Trading Permit fee credit when it first launched operations to attract order flow and increase membership by lowering the costs for Members that connect via the MEO Interface and FIX Interface. The Exchange believes the Trading Permit Fee Credit

and 95299 (July 15, 2022), 87 FR 43563 (July 21, 2022) (SR-MEMX-2022-17) (proposing to adopt fees for connectivity). See also, e.g., Securities Exchange Act Release No. 88211 (February 14, 2020), 85 FR 9847 (February 20, 2020) (SR-NYSE-NAT-2020-05), available at <https://www.nyse.com/publicdocs/nyse/markets/nyse-national/rule-filings/filings/2020/SR-NYSENat-2020-05.pdf> (initiating market data fees for the NYSE National exchange after initially setting such fees at zero).

has achieved its purpose and the Exchange believes that it is appropriate to remove this credit in light of the current operating conditions and membership population on the Exchange.

Implementation and Procedural History

The proposed rule change will be immediately effective. The Exchange initially filed this proposal on July 1, 2021 (along with the removal of a separate credit), with the proposed changes being immediately effective.¹⁹ In that proposal, the Exchange also proposed to increase its Trading Permit fees. Between August 2021 and September 2022, the Exchange withdrew and refiled the proposed rule change, each time to meaningfully attempt to provide additional justification for the proposed fee changes, provide enhanced details regarding the Exchange's cost methodology or to supplement its competition based arguments.²⁰ The Commission received three comment letters from one commenter on the various filings.²¹ On October 25, 2022, the Exchange withdrew its latest proposal and submitted a revised proposal to only remove the Trading Permit Fee Credit (SR-PEARL-2022-45, which was not noticed by the

¹⁹ See Securities Exchange Act Release No. 92366 (July 9, 2021), 86 FR 37379 (SR-PEARL-2021-32).

²⁰ See Securities Exchange Act Release Nos. 92797 (August 27, 2021), 86 FR 49399 (September 2, 2021) (SR-PEARL-2021-32) (“Suspension Order 1”); 93555 (November 10, 2021), 86 FR 64254 (November 17, 2021) (SR-PEARL-2021-54); 93895 (January 4, 2022), 87 FR 1217 (January 10, 2022) (SR-PEARL-2021-59); 94287 (February 18, 2022), 87 FR 10837 (February 25, 2022) (SR-PEARL-2022-05) (“Suspension Order 2”); 94696 (April 12, 2022), 87 FR 22987 (April 18, 2022) (SR-PEARL-2022-09); 94993 (May 26, 2022), 87 FR 33518 (June 2, 2022) (SR-PEARL-2022-23); SR-PEARL-2022-28; 95419 (August 4, 2022), 87 FR 48702 (August 10, 2022) (SR-PEARL-2022-30); 95775 (September 15, 2022), 87 FR 57544 (September 20, 2022) (SR-PEARL-2022-35).

²¹ See Letters from Richard J. McDonald, Susquehanna International Group, LLC (“SIG”), to Vanessa Countryman, Secretary, Commission, dated September 28, 2021 and March 15, 2022, and Letter from Brian Sopinsky, General Counsel, SIG, to Vanessa Countryman, Secretary, Commission, dated May 9, 2022.

Commission). On November 2, 2022, the Exchange withdrew SR-PEARL-2022-45 and now resubmits a revised proposal to only remove the Trading Permit Fee Credit.

2. Statutory Basis

The Exchange believes that its proposal to amend the Fee Schedule is consistent with Section 6(b) of the Act²² in general, and furthers the objectives of Section 6(b)(4) of the Act²³ in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act in that it is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.²⁴

The proposed changes to the Fee Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for order flow, which constrains its pricing determinations. The fact that the market for order flow is competitive has long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated, “[n]o one disputes that competition for order flow is ‘fierce.’ ... As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their 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’”²⁵

²² 15 U.S.C. 78f(b).

²³ 15 U.S.C. 78f(b)(4).

²⁴ 15 U.S.C. 78f(b)(5).

²⁵ *See NetCoalition*, 615 F.3d at 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention to determine prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, 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.”²⁶

The Exchange believes its proposal to remove the nominal Trading Permit Fee Credit of \$100 for EEMs that connect via both the MEO Interface and FIX Interface is reasonable, equitable and not unfairly discriminatory because all market participants will no longer be offered the ability to receive the credit. The Exchange believes it is reasonable and equitable to remove the nominal \$100 Trading Permit Fee Credit for business and competitive reasons. The Exchange established the Trading Permit Fee Credit to lower the costs for EEMs that connect via the MEO Interface and FIX Interface as a means to attract order flow and memberships after the Exchange first launched operations. The Exchange now believes that it is appropriate to remove this credit in light of the current operating conditions and membership on the Exchange.

The Exchange commenced operations in February 2017²⁷ and adopted its initial fee schedule that waived fees for Trading Permits to trade on the Exchange.²⁸ Although Trading Permit fees were waived, an initial fee structure was put in place to communicate the Exchange’s intent to charge Trading Permit fees in the future. As a new exchange entrant, the Exchange

²⁶ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

²⁷ See supra note 3.

²⁸ See supra note 5.

chose to offer Trading Permits free of charge to encourage market participants to trade on the Exchange and experience, among things, the quality of the Exchange’s technology and trading functionality. This practice is not uncommon. New exchanges often do not charge fees or charge lower fees for certain services such as memberships or trading permits to attract order flow to a new market, and later amend their fees to reflect the true value of those services, absorbing all costs to provide those services in the meantime. Allowing new exchange entrants time to build and sustain market share through various pricing incentives before increasing non-transaction fees encourages market entry and promotes competition. It also enables new exchanges to mature their markets and allow market participants to trade on the new exchanges without fees serving as a potential barrier to attracting memberships and order flow.²⁹ Later in 2018, as the Exchange’s market share increased,³⁰ the Exchange adopted nominal fees for Trading Permits along with the Trading Permit Fee Credit.³¹

The Exchange recently reviewed the calculation and amount of its Trading Permit fees. In its review, the Exchange determined that the nominal Trading Permit Fee Credit of \$100 is no

²⁹ See supra note 18.

³⁰ The Exchange experienced a monthly average trading volume of 3.94% for the month of March 2018. See supra note 6, Market at a Glance (last visited November 2, 2022).

³¹ See supra note 12. At that time, the Exchange chose to adopt a volume tier-based fee for Trading Permits along with the type of interface used – FIX or MEO – as a way to provide different choices regarding how potential Members could access the Exchange’s System. This was for business and competitive reasons and to provide choice regarding Trading Permits and membership that had not previously existed. The Exchange has since proposed to move away from the volume tier-based Trading Permit fee structure and filed a proposal with the Commission so that its Trading Permit fee structure aligns with that of the Exchange’s affiliates, MIAX and MIAX Emerald, as well as other options exchanges by assessing Market Makers Trading Permit fees based on options classes assigned. See also Securities Exchange Act Release No. 95780 (September 15, 2022), 87 FR 57732 (September 21, 2022) (SR-PEARL-2022-39) (amending the Trading Permit Fees in the MIAX Pearl Options Fee Schedule).

longer necessary to attract market share or memberships. The Exchange believes that even with the proposal to remove the nominal \$100 Trading Permit Fee Credit, the Exchange’s Trading Permit fees for EEMs (\$1,000 for EEMs that connect via the FIX Interface and \$3,000 for EEMs that connect via the MEO Interface) will be similar to the rates charged by the Exchange’s affiliates, Miami International Securities Exchange, LLC (“MIAX”)³² and MIAX Emerald, LLC (“MIAX Emerald”)³³, and competing options exchanges in the industry for similar Trading Permits for such market participants. For example, BOX Options Exchange LLC (“BOX”)³⁴ assesses a “Participant Fee” of \$1,500 per month; NYSE Arca, Inc. (“NYSE Arca”)³⁵ assesses Office and Clearing Firms Trading Permit fees of \$1,000 per month; NYSE American, LLC (“NYSE American”)³⁶ assesses Clearing Members and Order Flow Providers “ATP Trading Permit” fees of \$1,000 per month; Nasdaq ISE LLC (“Nasdaq ISE”)³⁷ assesses Electronic Access

³² See MIAX Fee Schedule, Section 3)b) (assessing MIAX EEMs a flat fee of \$1,500 per month for Trading Permits).

³³ See MIAX Emerald Fee Schedule, Section 3)b) (assessing MIAX Emerald EEMs a flat fee of \$1,500 per month for Trading Permits).

³⁴ See BOX fee schedule, Section 1, available at <https://boxexchange.com/assets/BOX-Fee-Schedule-as-of-June-1-2022-1.pdf> (last visited October 19, 2022). BOX’s Participant Fee is the analog to the Exchange’s Trading Permit fee for EEMs who use the FIX interface. BOX had an average daily market share of 6.64% for the month of October (as of October 19, 2022). See *supra* note 6, Market at a Glance.

³⁵ See NYSE Arca Options Fees and Charges, OTP Trading Participant Rights, p.1, available at https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf (last visited October 19, 2022).

³⁶ See NYSE American Options Fee Schedule, Section III, Monthly Trading Permit, Rights, Floor Access and Premium Product Fees, p. 23-24, available at https://www.nyse.com/publicdocs/nyse/markets/american-options/NYSE_American_Options_Fee_Schedule.pdf (last visited October 19, 2022). NYSE American’s ATP Trading Permit fee for Clearing Members and Order Flow Providers is the analog for the Exchange’s Trading Permit fee for EEMs that use the FIX interface.

³⁷ See Nasdaq ISE Options 7 Pricing Schedule, Section 8.A. Access Services, available at <https://listingcenter.nasdaq.com/rulebook/ise/rules/ISE%20Options%207> (last visited

Members “Access Fees” of \$500 per month; Cboe Exchange, Inc. (“Cboe”)³⁸ assesses Electronic Access Permit fees of \$3,000 per month and Clearing TPH Permit fees of \$2,000 per month; and Cboe C2 Exchange, Inc. (“Cboe C2”)³⁹ assesses Electronic Access Permit fees of \$1,000 per month. None of these exchanges offer a related credit.

There is no requirement, regulatory or otherwise, that any broker-dealer connect to and access any (or all of) the available options exchanges. One other exchange recently noted in a proposal to amend their own trading permit fees that of the 62 market making firms that are registered as Market Makers across Cboe, MIAX, and BOX, 42 firms access only one of the three exchanges.⁴⁰ Further, the Exchange and its affiliates, MIAX and MIAX Emerald, have a total of 47 members. Of those 47 total members, 35 are members of all three exchanges, four are members of only two (2) exchanges, and eight (8) are members of only one exchange. Of those

October 19, 2022). Nasdaq ISE Options’ EAM Access Fee is the analog to the Exchange’s Trading Permit fee for EEMs that use the FIX Interface. Nasdaq ISE had an average daily market share of 6.35% for the month of October (as of October 19, 2022). See supra note 6, Market at a Glance.

³⁸ See Cboe Fee Schedule, Electronic Trading Permit Fees, available at https://cdn.cboe.com/resources/membership/Cboe_FeeSchedule.pdf (last visited October 19, 2022). Cboe’s Electronic Access Permit fee and Clearing TPH fee are the analog to the Exchange’s Trading Permit fee for EEMs that use the FIX Interface.

³⁹ See Cboe C2 Fee Schedule, Access Fees, available at https://www.cboe.com/us/options/membership/fee_schedule/ctwo/ (last visited October 19, 2022). Cboe C2’s Electronic Access Permit fee is the analog to the Exchange’s Trading Permit fee for EEMs that use the FIX Interface. Cboe C2 had an average daily market share of 4.65% for the month of October (as of October 19, 2022). See supra note 6, Market at a Glance.

⁴⁰ See Securities Exchange Act Release No. 94894 (May 11, 2022), 87 FR 29987 (May 17, 2022) (SR-BOX-2022-17) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Fee Schedule on the BOX Options Market LLC Facility To Adopt Electronic Market Maker Trading Permit Fees). The Exchange believes that BOX’s observation demonstrates that market making firms can, and do, select which exchanges they wish to access, and, accordingly, options exchanges must take competitive considerations into account when setting fees for such access.

that are Market Makers today on the Exchange, two (2) are not registered as Market Makers on MIAX and one (1) is not registered as a Market Maker on MIAX Emerald. Broken down even further, of those Market Makers that use the MEO Interface and reached the Exchange's top tier for the Trading Permit fee for June 2022, one (1) Market Maker was only a Member of the Exchange and not its two affiliates, MIAX and MIAX Emerald. The above data evidences that a Member need not be a member of all options exchanges, let alone the Exchange and its two affiliates, and market participants elect to do so based on their own business decisions and need to directly access each exchange's liquidity pool. Not only is there not an actual regulatory requirement to connect to every options exchange, the Exchange believes there is also no "de facto" or practical requirement as well, as further evidenced by the market maker membership analysis of the options exchanges discussed above. Indeed, Members choose if and how to access a particular exchange and because it is a choice, the Exchange must set reasonable pricing, otherwise prospective market makers would not connect and existing Market Makers would disconnect from the Exchange.

The Exchange believes that elasticity of demand for Exchange Membership exists when it comes to purchasing a Trading Permit and, as evidenced by the below data, prior fee proposals have resulted in Members terminating their memberships.⁴¹ For example, over the course of those prior filings, three (3) Members terminated their memberships in the time since the proposed fee increase first went into effect. In June 2021, the month immediately preceding the initial implementation of the prior proposed fee change, the Exchange had 20 users of the MEO Interface and 28 users of the FIX Interface. These numbers remained stagnant until August

⁴¹ See Securities Exchange Act Release No. 95419 (August 4, 2022), 87 FR 48702 (August 10, 2022) (SR-PEARL-2022-30).

2021, where one Member that utilized the MEO Interface ceased utilizing the MEO Interface and again in December 2021 where one Member that utilized the FIX Interface ceased utilizing the FIX Interface. These numbers again remained stagnant until March 2022, where another Member that utilized the FIX Interface ceased utilizing the FIX Interface. This resulted in 19 users of the MEO Interface and 26 users of the FIX Interface. Further, other exchanges have also experienced termination of memberships if their members deem permit or membership fees to be unreasonable or excessive. For example, the Exchange notes that a BOX participant modified its access to BOX in connection with the implementation of a proposed change to BOX's permit fees.⁴² The absence of new memberships coupled with the termination of two memberships on the Exchange, as well as similar membership changes on another options exchange in relation to a trading permit fee increase, clearly shows that elasticity of demand exists.

The Exchange notes that there are material costs associated with providing the infrastructure and headcount to fully-support access to the Exchange. The Exchange incurs technology expenses related to establishing and maintaining Information Security services, enhanced network monitoring and customer reporting associated with its network technology. While some of the expense is fixed, much of the expense is not fixed, and thus increases as the expenses associated with access services for Members increases. For example, new Members to

⁴² According to BOX, a Market Maker on BOX terminated its status as a Market Maker in response to BOX's proposed modification of Market Maker trading permit fees. See Securities Exchange Act Release No. 94894 (May 11, 2022), 87 FR 29987 (May 17, 2022) (SR-BOX-2022-17). BOX noted, and the Exchange agrees, that this Market Maker's decision demonstrates that Market Makers can, and do, alter their membership status if they deem permit fees at an exchange to be unsuitable for their business needs, thus demonstrating the competitive environment for Market Maker permit fees and the constraints on options exchanges when setting Market Maker permit fees.

the Exchange may require the purchase of additional hardware to support those Members as well as enhanced monitoring and reporting of customer performance that the Exchange provides. Further, as the total number of Members increase, the Exchange may need to increase its data center footprint and consume more power, resulting in increased costs charged by their third-party data center provider. Accordingly, the cost to the Exchange to provide access to its Members is not fixed. The Exchange believes the proposal to remove the Trading Permit Fee Credit is reasonable in order to offset a portion of the costs to the Exchange associated with providing access to its quote and order infrastructure.

The Exchange again notes that it operates in a highly competitive market in which market makers can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees for services and products, in addition to order flow, to remain competitive with other exchanges. The Exchange believes that the proposed changes reflect this competitive environment. The Exchange again notes it is not aware of any reason why Members could not simply drop their access to an exchange (or not initially access an exchange) if an exchange were to establish prices for its non-transaction fees that, in the determination of such market participant, did not make business or economic sense to access such exchange. The Exchange again notes that no broker-dealer is required by rule, regulation, or competitive forces to be a Member on the Exchange.

Accordingly, the Exchange believes removal of the nominal \$100 Trading Permit Fee Credit is reasonable and equitable. It is also not unfairly discriminatory as the removal of the credit applies equally to all EEMs and the Exchange's Trading Permit fees for EEMs are in line with similar fees charged by competitor exchanges.

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

In accordance with Section 6(b)(8) of the Act,⁴³ the Exchange believes that the proposed rule change would not impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intra-Market Competition

The Exchange believes the removal of the Trading Permit fee credit will not place certain market participants at a relative disadvantage to other market participants because, in order to attract order flow when the Exchange first launched operations, the Exchange established this credit to lower the initial fixed cost for Members. The Exchange now believes that it is appropriate to remove this credit in light of the current operating conditions, including the Exchange's overall membership and the current type and amount of volume executed on the Exchange. The Exchange believes that the Exchange's current rebates and fees will still allow the Exchange to remain highly competitive such that the Exchange should continue to attract order flow and maintain market share. The proposed fee change will not impact intra-market competition because it will apply to all Members equally.

Inter-Market Competition

The Exchange operates in a highly competitive market in which market participants can readily favor one of the 15 competing options venues if they deem fee levels at a particular venue to be excessive. Based on publicly-available information, and excluding index-based options, no single exchange has more than approximately 16% market share. Therefore, no exchange possesses significant pricing power regarding memberships or in the execution of multiply-listed equity and exchange-traded fund ("ETF") options order flow. Over the course of

⁴³ 15 U.S.C. 78f(8).

2021 and 2022, the Exchange's market share has fluctuated between approximately 3-6% of the U.S. equity options industry.⁴⁴ The Exchange is not aware of any evidence that a market share of approximately 3-6% provides the Exchange with anti-competitive pricing power when it comes to competition for memberships. The Exchange believes that the ever-shifting market share among exchanges from month to month demonstrates that market participants can discontinue memberships in response to fee changes. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract and retain memberships on the Exchange.

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

The Exchange responded to comment letters in a prior proposal.⁴⁵

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,⁴⁶ and Rule 19b-4(f)(2)⁴⁷ 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.

⁴⁴ See supra note 6.

⁴⁵ See supra note 20.

⁴⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴⁷ 17 CFR 240.19b-4(f)(2).

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. Please include File Number SR-PEARL-2022-47 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-2022-47. 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-2022-47 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁸

J. Matthew DeLesDernier

Deputy Secretary

⁴⁸ 17 CFR 200.30-3(a)(12).