SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-99907; File No. SR-PEARL-2024-15)

April 4, 2024

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the MIAX Pearl Equities Exchange Fee Schedule to Establish Market Data Fees

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on March 26, 2024, MIAX PEARL, LLC ("MIAX Pearl" or "Exchange") filed with the Securities and Exchange Commission ("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

The Exchange is filing a proposal to amend the MIAX Pearl Equities Exchange Fee Schedule (the "Fee Schedule") to adopt fees for the Exchange's proprietary market data feeds.[3]

The text of the proposed rule change is available on the Exchange's website at https://www.miaxoptions.com/rule-filings, 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.

3 All references to the "Exchange" in this filing refer to MIAX Pearl Equities. Any references to the options trading facility of MIAX PEARL, LLC will specifically be referred to as "MIAX Pearl Options."

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

MIAX Pearl Equities provided its proprietary market data for free to subscribers for over three and half years since it commenced operations in September 2020.[4] Since that time, the Exchange has solely and entirely absorbed all costs associated with compiling and disseminating its proprietary market data. The Exchange offers two standard proprietary market data products, the Top of Market ("ToM") feed and the Depth of Market ("DoM") feed (collectively, the "market data feeds"). Each of these proprietary market data products are described in Exchange Rule 2625.

Exchange Rule 2625(a) provides that the DoM feed is a data feed that contains the displayed price and size of each order in an equity security entered in the System,[5] as well as order execution information, order cancellations, order modifications, order identification numbers, and administrative messages. Exchange Rule 2625(b) provides that the ToM feed is a data feed that contains the price and aggregate size of displayed top of book quotations, order execution information, and administrative messages for equity securities entered into the System. Section 3 of the Fee Schedule entitled, Market Data Fees, specifically provides that fees for both the ToM and DoM feeds are waived for the Waiver Period.[6] As described in more detail below,

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4 See Securities Exchange Act Release No. 90651 (December 11, 2020), 85 FR 81971 (December 17, 2020) (SR-PEARL-2020-33).

5 The term "System" means the automated trading system used by the Exchange for the trading of securities. See Exchange Rule 100.

6 The term "Waiver Period" means, for each applicable fee, the period of time from the initial effective date

the Exchange proposes to remove this waiver language and adopt fees for the ToM and DoM feeds to recoup its ongoing costs going forward.

The Exchange notes that there is no requirement that any Equity Member[7] or market participant subscribe to the ToM or DoM feeds offered by the Exchange. Instead, an Equity Member may choose to maintain subscriptions to the ToM or DoM feeds based on their own business needs and trading models. The proposed fees will not apply differently based upon the size or type of firm, but rather based upon the subscriptions that each firm elects to purchase.

The Exchange commenced operations in September 2020 and expressly waived fees for both the ToM and DoM data feeds since that time to incentivize market participants to subscribe and make the Exchange's market data more widely available.[8] In the three and a half years since the Exchange launched operations, its market share has grown from 0% to approximately 2.0% for the month of March 2024.[9] One of the primary objectives of the Exchange is to provide competition and to provide low cost options to the industry. Consistent with this objective, the Exchange believes that this proposal reflects a simple, competitive, reasonable, and equitable pricing structure.

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,

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of the MIAX Pearl Equities Fee Schedule until such time that MIAX Pearl has an effective fee filing establishing the applicable fee. MIAX Pearl Equities will issue a Regulatory Circular announcing the establishment of an applicable fee that was subject to a Waiver Period at least fifteen (15) days prior to the termination of the Waiver Period and effective date of any such applicable fee. See the Definitions section of the Fee Schedule.

7 The term "Equity Member" is a Member authorized by the Exchange to transact business on MIAX Pearl Equities. See Exchange Rule 1901.

8 See supra note 4.

9 See the "Market Share" section of the Exchange's website, available at https://www.miaxglobal.com/.

and not create an undue burden on competition among Equity Members and markets. The Exchange believes this high standard is especially important when an exchange imposes various fees for market participants to access an exchange's market data. The Exchange believes that it is important to demonstrate that these fees are based on its costs and reasonable business needs. Accordingly, the Exchange included a cost analysis below in connection with the proposed market data fees and the costs associated with compiling and providing the ToM and DoM feeds ("Cost Analysis").

The Exchange believes the proposed fees will allow the Exchange to offset the expenses[10] the Exchange has and will continue to incur associated with compiling and disseminating the ToM and DoM feeds. Further, the Exchange believes it provided sufficient transparency in the Cost Analysis provided below, which provides a basis for how the Exchange determined to charge such fees. The Exchange's proposal is described below.

Definitions

The Exchange proposes to include a Definitions section at the beginning of Section 3 of the Fee Schedule. The purpose of the Definitions section is to provide market participants greater clarity and transparency regarding the applicability of fees by defining certain terms used in connection with market data feeds within the Fee Schedule in a single location related to the Exchange's market data products. The Exchange notes that other equities exchanges include similar Definitions in their respective fee schedules,[11] and that each of the Exchange's proposed

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10 For the avoidance of doubt, all references to expense or costs in this filing, including the cost categories discussed below, refer to costs incurred by MIAX Pearl Equities only and not MIAX Pearl Options, the options trading facility.

11 See the market data sections of the fee schedules for the Cboe BZX Exchange, Inc. ("Cboe BZX"); Cboe BYX Exchange, Inc. ("Cboe BYX"); Cboe EDGA Exchange, Inc. ("Cboe EDGA"); and Cboe EDGX Exchange, Inc. ("Cboe EDGX"). See also the market data definition section of the MEMX LLC's ("MEMX") fee schedule; and Securities Exchange Act Release No. 97130 (March 13, 2023), 88 FR 16491 (March 17, 2023) (SR-MEMX-2023-04) ("MEMX Market Data Fee Proposal").

definitions are based on those exchanges. The Exchange believes that including a Definitions section for market data products makes the Fee Schedule more user-friendly and comprehensive.

The Exchange proposes to define the following terms in Section 3 of the Fee Schedule:

- Distributor. Any entity that receives the Exchange data product directly from the Exchange or indirectly through another entity and then distributes it internally or externally to a third party.
- External Distributor. A Distributor that receives the Exchange data product and then distributes that data to a third party or one or more Users outside the Distributor's own entity.
- Internal Distributor. A Distributor that receives the Exchange data product and then distributes that data to one or more Users within the Distributor's own entity.
    - The Exchange notes that it proposes to use the phrase "own organization" in the definition of Internal Distributor and External Distributor because a subscriber would be permitted to share data received from an exchange data product to other legal entities affiliated with the subscriber's entity that have been disclosed to the Exchange without such distribution being considered external to a third party. For instance, if a company has multiple affiliated broker-dealers under the same holding company, that company could have one of the broker-dealers or a non-broker-dealer affiliate subscribe to an exchange data product and then share the data with other affiliates that have a need for the data. This sharing with affiliates would not be considered external distribution to a third party but instead would be considered internal distribution to data recipients within the Distributor's own organization.

- Non-Display Usage. Any method of accessing an Exchange data product that involves access or use by a machine or automated device without access or use of a display by a natural person or persons.
- Non-Professional User. A natural person or qualifying trust that uses Exchange data only for personal purposes and not for any commercial purpose and, for a natural person who works in the United States, is not: (i) registered or qualified in any capacity with the Securities and Exchange Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an "investment adviser" as that term is defined in Section 202(a)(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt; or, for a natural person who works outside of the United States, does not perform the same functions as would disqualify such person as a Non-Professional User if he or she worked in the United States.
- Professional User. Any User other than a Non-Professional User.
- Trading Platform. Any execution platform operated as or by a registered National Securities Exchange (as defined in Section 3(a)(1) of the Exchange Act), an Alternative Trading System (as defined in Rule 300(a) of Regulation ATS), or an Electronic Communications Network (as defined in Rule 600(b)(23) of Regulation NMS).
- User. A Professional User or Non-Professional User.

Proposed Market Data Pricing

As described above, the ToM feed is a data feed that contains the price and aggregate size of displayed top of book quotations, order execution information, and administrative messages for equity securities entered into the System. The DoM feed is a data feed that contains the displayed price and size of each order in an equity security entered in the System, as well as order execution information, order cancellations, order modifications, order identification numbers, and administrative messages. The Exchange proposes to charge the below fees for the ToM and DoM data feeds, which, the Exchange believes are equal to or lower than market data fees charged by other similarly situated equities exchanges. Each of the below capitalized terms are defined above and would be included under the proposed Definitions section under Section 3, Market Data Fees, of the Fee Schedule.

1. Internal Distributor Fee. The Exchange proposes to charge Internal Distributors a monthly fee of $1,000.00 for the ToM feed and $2,000.00 for the DoM feed. The proposed Internal Distributor fees would only be charged once per month per subscriber.

2. External Distributor Fee. The Exchange proposes to charge Internal Distributors a monthly fee of $2,000.00 for the ToM feed and $2,500.00 for the DoM feed. The proposed External Distributor fees would only be charged once per month per subscriber.

3. User Fees. For the ToM feed, the Exchange proposes to charge a monthly fee of $2.00 for each Professional User and $0.10 for each Non-Professional User. For the DoM feed, the Exchange proposes to charge a monthly fee of $30.00 for each Professional User and $3.00 for each Non-Professional User. The proposed User

fees would apply to each person that has access to the ToM or DoM feed that is provided by a Distributor (either Internal or External) for displayed usage. Each Distributor's User count would include every individual that accesses the data regardless of the purpose for which the individual uses the data. Distributors of the ToM or DoM feed would be required to report all Professional and Non-Professional Users in accordance with the following:

- In connection with a Distributor's distribution of the ToM or DoM feed, the Distributor must count as one User each unique User that the Distributor has entitled to have access to the ToM or DoM feed.
- Distributors must report each unique individual person who receives access through multiple devices or multiple methods (e.g., a single User has multiple passwords and user identifications) as one User.
- If a Distributor entitles one or more individuals to use the same device, the Distributor must include only the individuals, and not the device, in the count. Thus, Distributors would not be required to report User device counts associated with a User's display use of the data feed.

4. Enterprise Fee. As an alternative to User fees, Distributors may purchase a monthly Enterprise license to receive ToM or DoM feeds for distribution to an unlimited number of Professional and Non-Professional Users. This provision would be codified under footnote "a" under the description of each the ToM and DoM feed in the Fee Schedule. The Exchange proposes to establish a monthly Enterprise fee of $15,000.00 for ToM and $25,000.00 for the DoM feed.

5. Non-Display Usage Fees. For both the ToM and DoM feeds, the Exchange proposes to establish separate Non-Display Usage fees for usage by Trading Platforms and other Users (i.e., not by Trading Platforms).

- *Non-Display Usage*. For Non-Display Usage, the Exchange proposes to establish a monthly fee of $1,000.00 for the ToM feed and $2,500.00 for the DoM feed.[12]
- Subscribers of Non-Display Usage for both the ToM and DoM feed will only be subject to the Non-Display Usage fee for the DoM feed. In other words, such subscribers would receive both the ToM and DoM feeds but only be charged the Non-Display Usage fee of $2,500.00 for the DoM feed. This provision would be codified under footnote "b" under the description of each the ToM and DoM feed in the Fee Schedule.
- *Non-Display Usage by Trading Platforms*. For Non-Display Usage by Trading Platforms, the Exchange proposes to establish a monthly fee of $2,500 for the ToM and DoM feeds. The Non-Displayed Usage by Trading Platform fee would only be charged per subscriber that uses the data within a Trading Platform.
- Subscribers of Non-Display Usage by Trading Platforms for both the ToM and DoM feed will only be subject to the Non-Display Usage by Trading Platforms fee for the DoM feed. In other words, such subscribers would

[12] Non-Display Usage would include trading uses such as high frequency or algorithmic trading as well as any trading in any asset class, automated order or quote generation and/or order pegging, price referencing for smart order routing, operations control programs, investment analysis, order verification, surveillance programs, risk management, compliance, and portfolio management.

receive both the ToM and DoM feeds but only be charged the Non-Display Usage by Trading Platforms fee of $2,500.00 for the DoM feed. This provision would be codified under footnote "c" under the description of each the ToM and DoM feed in the Fee Schedule.

- The fee would also represent the maximum charge per subscriber regardless of the number of Trading Platforms operated by the subscriber that receives the data for Non-Display Usage. This provision would be codified under footnote "d" under the description of each the ToM and DoM feed in the Fee Schedule.
- *Miscellaneous*. The proposed fees for Non-Display Usage would only be charged once per category per subscriber. In other words, with respect to Non-Display Usage Fees, a subscriber that uses the ToM feed for: (i) non-display purposes but not to operate a Trading Platform would pay $1,000 per month; (ii) a subscriber that uses the ToM feed in connection with the operation of one or more Trading Platforms (but not for other purposes) would pay $2,500 per month; and (iii) a subscriber that uses the ToM feed for non-display purposes other than operating a Trading Platform and for the operation of one or more Trading Platforms would pay $3,500 per month.

Implementation

The Exchange issued an alert publicly announcing the proposed fees on January 31, 2024.[13] The Exchange issued a Regulatory Circular on March 15, 2024 announcing the

[13] See Fee Change Alert, MIAX Pearl Equities Exchange – April 1, 2024 Market Data Fee Changes, available at https://www.miaxglobal.com/alert/2024/01/31/miax-pearl-equities-exchange-april-1-2024-market-data-fee-changes.

establishment of the proposed market data fees to satisfy the required fifteen (15) day notice period, as described in the Definitions Section of the Fee Schedule for termination of the Waiver Period.[14] The proposed fee changes will be effective beginning April 1, 2024.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)[15] of the Act in general, and furthers the objectives of Section 6(b)(4)[16] of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Equity Members and other persons using its facilities. Additionally, the Exchange believes that the proposed fees are consistent with the objectives of Section 6(b)(5)[17] of the Act in that they are designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to a free and open market and national market system, and, in general, to protect investors and the public interest, and, particularly, are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In 2019, Commission staff published guidance suggesting the types of information that self-regulatory organizations ("SROs") may use to demonstrate that their fee filings comply with the standards of the Exchange Act (the "Staff Guidance").[18] While the Exchange understands

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14 See MIAX Pearl Equities Regulatory Circular 2024-06, Termination of Waiver Period for Market Data Fees and Establishment of Fee Amounts, dated March 15, 2024, available at Pearl_Equities_RC_2024_06.pdf (miaxglobal.com).

15 15 U.S.C. 78f.

16 15 U.S.C. 78f(b)(4).

17 15 U.S.C. 78f(b)(5).

18 See Staff Guidance on SRO Rule Filings Relating to Fees (May 21, 2019), available at https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees.

that the Staff Guidance does not create new legal obligations on SROs, the Staff Guidance is consistent with the Exchange's view about the type and level of transparency that exchanges should meet to demonstrate compliance with their existing obligations when they seek to charge new fees. The Staff Guidance provides that in assessing the reasonableness of a fee, the Staff would consider whether the fee is constrained by significant competitive forces. To determine whether a proposed fee is constrained by significant competitive forces, the Staff Guidance further provides that the Staff would consider whether the evidence provided by an SRO in a Fee Filing proposal demonstrates (i) that there are reasonable substitutes for the product or service that is the subject of a proposed fee; (ii) that "platform" competition constrains the fee; and/or (iii) that the revenue and cost analysis provided by the SRO otherwise demonstrates that the proposed fee would not result in the SRO taking supra-competitive profits.[19] The Exchange provides sufficient evidence below to support the findings that the proposed fees are constrained by competitive forces; the market data feeds each have a reasonable substitute; and that the proposed fees would not result in a supra-competitive profit.

In adopting Regulation NMS, the Commission granted SROs and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. Particularly, the market data feeds further broaden the availability of U.S. option market data to investors consistent with the principles of Regulation NMS. The data products also promotes increased transparency through the dissemination of information regarding quotes and last sale information during the trading

[19] Id.

day, which may allow market participants to make better informed trading decisions throughout the day.

There are currently 16 registered exchanges that trade equities. For the month of March 2024, based on publicly available information, no single equities exchange had more than approximately 16% of the equities market share and the Exchange represented only approximately 2.0% of the equities market share.[20] The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Particularly, 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."[21] Making similar data products available to market participants fosters competition in the marketplace, and constrains the ability of exchanges to charge supra-competitive fees. In the event that a market participant views one exchange's data product as more or less attractive than the competition they can and do switch between similar products.

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

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[20] See the "Market Share" section of the Exchange's website, available at https://www.miaxglobal.com/.

[21] See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) ("Regulation NMS Adopting Release").

possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'…."[22]

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."[23]

Congress directed the Commission to "rely on 'competition, whenever possible, in meeting its regulatory responsibilities for overseeing the SROs and the national market system.'"[24] As a result, the Commission has historically relied on competitive forces to determine whether a fee proposal is equitable, fair, reasonable, and not unreasonably or unfairly discriminatory. "If competitive forces are operative, the self-interest of the exchanges themselves will work powerfully to constrain unreasonable or unfair behavior."[25] Accordingly, "the existence of significant competition provides a substantial basis for finding that the terms of an exchange's fee proposal are equitable, fair, reasonable, and not unreasonably or unfairly

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22 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)).

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

24 See NetCoalition, 615 F.3d at 534-35; see also H.R. Rep. No. 94-229 at 92 (1975) ("[I]t is the intent of the conferees that the national market system evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed.").

25 See Securities Exchange Act Release No. 59039 (December 2, 2008), 73 Fed. Reg. 74,770 (December 9, 2008) (SR-NYSEArca-2006-21).

discriminatory."[26] In the Staff Guidance, Commission Staff indicated that they would look at factors beyond the competitive environment, such as cost, only if a "proposal lacks persuasive evidence that the proposed fee is constrained by significant competitive forces."[27] In this case, the Exchange provided the below Cost Analysis.

Cost Analysis

In general, the Exchange believes that exchanges, in setting fees of all types, should meet high standards of transparency to demonstrate why each new fee or fee increase meets the Exchange Act requirements that fees be reasonable, equitably allocated, not unfairly discriminatory, and not create an undue burden on competition among members and markets. In particular, the Exchange believes that each exchange should take extra care to be able to demonstrate that these fees are based on its costs and reasonable business needs.

Accordingly, in proposing to charge fees for market data, the Exchange is especially diligent in assessing those fees in a transparent way against its own aggregate costs of providing the related service, and in carefully and transparently assessing the impact on Equity Members – both generally and in relation to other Equity Members – to ensure the fees will not create a financial burden on any participant and will not have an undue impact in particular on smaller Equity Members and competition among Equity Members in general. The Exchange does not believe it needs to otherwise address questions about market competition in the context of this filing because the proposed fees are consistent with the Act based on its Cost Analysis. The Exchange also believes that this level of diligence and transparency is called for by the

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[26] Id.

[27] See supra note 18.

requirements of Section 19(b)(1) under the Act,[28] and Rule 19b-4 thereunder,[29] with respect to the types of information SROs should provide when filing fee changes, and Section 6(b) of the Act,[30] which requires, among other things, that exchange fees be reasonable and equitably allocated,[31] not designed to permit unfair discrimination,[32] and that they not impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[33] This proposal addresses those requirements, and the analysis and data in this section are designed to clearly and comprehensively show how they are met.

In 2020, the Exchange completed a study of its aggregate costs to produce market data and connectivity, defined above as its Cost Analysis.[34] The Cost Analysis required a detailed analysis of the Exchange's aggregate baseline costs, including a determination and allocation of costs for core services provided by the Exchange – transaction execution, market data, membership services, physical connectivity, and port access (which provide order entry, cancellation and modification functionality, risk functionality, the ability to receive drop copies, and other functionality). The Exchange separately divided its costs between those costs necessary to deliver each of these core services, including infrastructure, software, human resources (i.e., personnel), and certain general and administrative expenses ("cost drivers").

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28 15 U.S.C. 78s(b)(1).

29 17 CFR 240.19b-4.

30 15 U.S.C. 78f(b).

31 15 U.S.C. 78f(b)(4).

32 15 U.S.C. 78f(b)(5).

33 15 U.S.C. 78f(b)(8).

34 The Exchange frequently updates it Cost Analysis as strategic initiatives change, costs increase or decrease, and market participant needs and trading activity changes. The Exchange's most recent Cost Analysis was conducted ahead of this filing.

As an initial step, the Exchange determined the total cost for the Exchange and its affiliated markets[35] for each cost driver as part of its 2024 budget review process. The 2024 budget review is a company-wide process that occurs over the course of many months, includes meetings among senior management, department heads, and the Finance Team. Each department head is required to send a "bottom up" budget to the Finance Team allocating costs at the profit and loss account and vendor levels for the Exchange and its affiliated markets based on a number of factors, including server counts, additional hardware and software utilization, current or anticipated functional or non-functional development projects, capacity needs, end-of-life or end-of-service intervals, number of members, market model (e.g., price time or pro-rata, simple only or simple and complex markets, auction functionality, etc.), which may impact message traffic, individual system architectures that impact platform size,[36] storage needs, dedicated infrastructure versus shared infrastructure allocated per platform based on the resources required to support each platform, number of available connections, and employees allocated time. All of these factors result in different allocation percentages among the Exchange and its affiliated markets, i.e., the different percentages of the overall cost driver allocated to the Exchange and its affiliated markets will cause the dollar amount of the overall cost allocated among the Exchange and its affiliated markets to also differ. Because the Exchange's parent company currently owns and operates four separate and distinct marketplaces, the Exchange must determine the costs associated with each actual market – as opposed to the Exchange's parent company simply concluding that all costs drivers are the same at each

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35 The affiliated markets include Miami International Securities Exchange, LLC ("MIAX"); separately, the options and equities markets of MIAX Pearl; and MIAX Emerald, LLC ("MIAX Emerald").

36 For example, MIAX maintains 24 matching engines, MIAX Pearl Options maintains 12 matching engines, MIAX Pearl Equities maintains 24 matching engines, and MIAX Emerald maintains 12 matching engines.

individual marketplace and dividing total cost by four (4) (evenly for each marketplace). Rather, the Exchange's parent company determines an accurate cost for each marketplace, which results in different allocations and amounts across exchanges for the same cost drivers, due to the unique factors of each marketplace as described above. This allocation methodology also ensures that no cost would be allocated twice or double-counted between the Exchange and its affiliated markets. MIAX PEARL, LLC further confirms that there is no double counting of expenses between the options and equities platform of MIAX PEARL, LLC. The Finance Team then consolidates the budget and sends it to senior management, including the Chief Financial Officer and Chief Executive Officer, for review and approval. Next, the budget is presented to the Board of Directors and the Finance and Audit Committees for each exchange for their approval. The above steps encompass the first step of the cost allocation process.

The next step involves determining what portion of the cost allocated to the Exchange pursuant to the above methodology is to be allocated to each core service, e.g., connectivity and ports, market data, and transaction services. The Exchange and its affiliated markets adopted an allocation methodology with thoughtful and consistently applied principles to guide how much of a particular cost amount allocated to the Exchange should be allocated within the Exchange to each core service. This is the final step in the cost allocation process and is applied to each of the cost drivers set forth below. For instance, fixed costs that are not driven by client activity (e.g., message rates), such as data center costs, were allocated more heavily to the provision of physical connectivity (for example, 60.1% of the data center total expense amount is allocated to 10Gb ULL connectivity), with smaller allocations to ToM and DoM (2.0% combined), and the remainder to the provision of other connectivity, ports, transaction execution, and membership services (37.9%). This next level of the allocation methodology at the individual exchange level

also took into account factors similar to those set forth under the first step of the allocation methodology process described above, to determine the appropriate allocation to connectivity or market data versus allocations for other services. This allocation methodology was developed through an assessment of costs with senior management intimately familiar with each area of the Exchange's operations. After adopting this allocation methodology, the Exchange then applied an allocation of each cost driver to each core service, resulting in the cost allocations described below. Each of the below cost allocations is unique to the Exchange and represents a percentage of overall cost that was allocated to the Exchange pursuant to the initial allocation described above.

By allocating segmented costs to each core service, the Exchange was able to estimate by core service the potential margin it might earn based on different fee models. The Exchange notes that as a non-listing venue it has five primary sources of revenue that it can potentially use to fund its operations: transaction fees, fees for connectivity and port services, membership fees, regulatory fees, and market data fees. Accordingly, the Exchange must cover its expenses from these five primary sources of revenue. The Exchange also notes that as a general matter each of these sources of revenue is based on services that are interdependent. For instance, the Exchange's system for executing transactions is dependent on physical hardware and connectivity; only Equity Members and parties that they sponsor to participate directly on the Exchange may submit orders to the Exchange; many Equity Members (but not all) consume market data from the Exchange in order to trade on the Exchange; and, the Exchange consumes market data from external sources in order to comply with regulatory obligations. Accordingly, given this interdependence, the allocation of costs to each service or revenue source required judgment of the Exchange and was weighted based on estimates of the Exchange that the

Exchange believes are reasonable, as set forth below. While there is no standardized and generally accepted methodology for the allocation of an exchange's costs, the Exchange's methodology is the result of an extensive review and analysis and will be consistently applied going forward for any other cost-justified potential fee proposals. In the absence of the Commission attempting to specify a methodology for the allocation of exchanges' interdependent costs, the Exchange will continue to be left with its best efforts to attempt to conduct such an allocation in a thoughtful and reasonable manner.

Through the Exchange's extensive Cost Analysis, which was again recently further refined, the Exchange analyzed nearly every expense item in the Exchange's general expense ledger to determine whether each such expense relates to the provision of market data feeds, and, if such expense did so relate, what portion (or percentage) of such expense actually supports the provision of market data feeds, and thus bears a relationship that is, "in nature and closeness," directly related to market data feeds. In turn, the Exchange allocated certain costs more to physical connectivity and others to ports, while certain costs were only allocated to such services at a very low percentage or not at all, using consistent allocation methodologies as described above. Based on this analysis, the Exchange estimates that the aggregate monthly cost to provide the market data feeds is $150,031 (the Exchange divided the annual cost for each of market data feed by 12 months, then added both numbers together), as further detailed below.

Costs Related to Offering the Market Data Feeds

The following chart details the individual line-item (annual) costs considered by the Exchange to be related to offering the market data feeds to its Equity Members and other customers, as well as the percentage of the Exchange's overall costs that such costs represent for

such area (e.g., as set forth below, the Exchange allocated approximately 8.9% of its overall Human Resources cost to offering the market data feeds).

COST DRIVERS	ALLOCATED ANNUAL COST[a]	ALLOCTED MONTHLY COST[b]	% OF ALL
Human Resources	$1,577,592	$131,466	8.9%
Connectivity (external fees, cabling, switches, etc.)	$933	$78	2.0%
Internet Services and External Market Data	$0.00	$0.00	0.0%
Data Center	$42,717	$3,560	2.0%
Hardware and Software Maintenance & Licenses	$25,921	$2,160	2.0%
Depreciation	$25,542	$2,129	0.5%
Allocated Shared Expenses	$127,655	$10,638	2.0%
TOTAL	**$1,800,360**	**$150,031**	**5.1%**

a. The Annual Cost includes figures rounded to the nearest dollar.
b. The Monthly Cost was determined by dividing the Annual Cost for each line item by twelve (12) months and rounding up or down to the nearest dollar.

Below are additional details regarding each of the line-item costs considered by the Exchange to be related to offering the market data feeds. While some costs were attempted to be allocated as equally as possible among the Exchange and its affiliated markets, the Exchange notes that some of its cost allocation percentages for certain cost drivers differ when compared to the same cost drivers for the Exchange's affiliated markets, MIAX and MIAX Emerald, in their recent proposed fee changes for options market data.[37] This is because the Exchange's cost allocation methodology utilizes the actual projected costs of the Exchange (which are specific to the Exchange and are independent of the costs projected and utilized by the Exchange's affiliated markets) to determine its actual costs, which may vary across the Exchange and its affiliated

[37] See Securities Exchange Act Release Nos. 99736 (March 14, 2024), 89 FR 19929 (March 20, 2024) (SR-MIAX-2024-13) and 99737 (March 14, 2024), 89 FR 19915 (March 20, 2024) (SR-EMERALD-2024-09).

markets based on factors that are unique to each marketplace, including that the Exchange, MIAX Pearl Options, and its affiliates trade different asset classes.

Human Resources

The Exchange notes that it and its affiliated markets anticipate that by year-end 2024, there will be 289 employees (excluding employees at non-options/equities exchange subsidiaries of Miami International Holdings, Inc. ("MIH"), the holding company of the Exchange and its affiliated markets), and each department leader has direct knowledge of the time spent by each employee with respect to the various tasks necessary to operate the Exchange. Specifically, twice a year, and as needed with additional new hires and new project initiatives, in consultation with employees as needed, managers and department heads assign a percentage of time to every employee and then allocate that time amongst the Exchange and its affiliated markets to determine each market's individual Human Resources expense. Then, managers and department heads assign a percentage of each employee's time allocated to the Exchange into buckets including network connectivity, ports, market data, and other exchange services. This process ensures that every employee is 100% allocated, ensuring there is no double counting between the Exchange and its affiliated markets.

For personnel costs (Human Resources), the Exchange calculated an allocation of employee time for employees whose functions include providing and maintaining market data feeds and performance thereof (primarily the Exchange's network infrastructure team, which spends a portion of their time performing functions necessary to provide market data). As described more fully above, the Exchange's parent company allocates costs to the Exchange and its affiliated markets and then a portion of the Human Resources costs allocated to the Exchange is then allocated to market data. From that portion allocated to the Exchange that applied to

market data, the Exchange then allocated a weighted average of 9.1% of each employee's time from the above group to market data feeds (which excludes an allocation for the recently hired Head of Data Services for the Exchange and its affiliates).

The Exchange also allocated Human Resources costs to provide the market data feeds to a limited subset of personnel with ancillary functions related to establishing and maintaining such market data feeds (such as information security, sales, membership, and finance personnel). The Exchange allocated cost on an employee-by-employee basis (i.e., only including those personnel who support functions related to providing market data feeds) and then applied a smaller allocation to such employees' time to market data (8.8%, which includes an allocation for the Head of Data Services). This other group of personnel with a smaller allocation of Human Resources costs also have a direct nexus to providing the market data feeds, whether it is a sales person selling a market data feed, finance personnel billing for market data feeds or providing budget analysis, or information security ensuring that such market data feeds are secure and adequately defended from an outside intrusion.

The estimates of Human Resources cost were therefore determined by consulting with such department leaders, determining which employees are involved in tasks related to providing market data feeds, and confirming that the proposed allocations were reasonable based on an understanding of the percentage of time such employees devote to those tasks. This includes personnel from the Exchange departments that are predominately involved in providing the market data feeds: Business Systems Development, Trading Systems Development, Systems Operations and Network Monitoring, Network and Data Center Operations, Listings, Trading Operations, and Project Management. Again, the Exchange allocated 9.1% of each of their employee's time assigned to the Exchange for the market data feeds, as stated above. Employees

from these departments perform numerous functions to support the market data feeds, such as the configuration and maintenance of the hardware necessary to support the market data feeds. This hardware includes servers, routers, switches, firewalls, and monitoring devices. These employees also perform software upgrades, vulnerability assessments, remediation and patch installs, equipment configuration and hardening, as well as performance and capacity management. These employees also engage in research and development analysis for equipment and software supporting market data feeds and design, and support the development and on-going maintenance of internally-developed applications as well as data capture and analysis, and Equity Member and internal Exchange reports related to network and system performance. The above list of employee functions is not exhaustive of all the functions performed by Exchange employees to support market, but illustrates the breath of functions those employees perform in support of the above cost and time allocations.

Lastly, the Exchange notes that senior level executives' time was only allocated to the market data feeds related Human Resources costs to the extent that they are involved in overseeing tasks related to providing market data. The Human Resources cost was calculated using a blended rate of compensation reflecting salary, equity and bonus compensation, benefits, payroll taxes, and 401(k) matching contributions.

Connectivity (external fees, cabling, switches, etc.)

The Connectivity cost driver includes cabling and switches required to generate and disseminate the market data feeds and operate the Exchange. The Connectivity cost driver is more narrowly focused on technology used to complete Equity Member subscriptions to the market data feeds and the servers used at the Exchange's primary and back-up data centers specifically for the market data feeds. Further, as certain servers are only partially utilized to

generate and disseminate the market data feeds, only the percentage of such servers devoted to generating and disseminating the market data feeds was included (i.e., the capacity of such servers allocated to the market data feeds).[38]

Internet Services and External Market Data

The next cost driver consists of internet services and external market data. Internet services includes third-party service providers that provide the internet, fiber and bandwidth connections between the Exchange's networks, primary and secondary data centers, and office locations in Princeton and Miami. External market data includes fees paid to third parties, including other exchanges, to receive market data. The Exchange did not allocate any costs associated with internet services or external market data to the market data feeds.

Data Center

Data Center costs includes an allocation of the costs the Exchange incurs to provide the market data feeds in the third-party data centers where it maintains its equipment (such as dedicated space, security services, cooling and power). The Exchange does not own the primary data center or the secondary data center, but instead leases space in data centers operated by third parties. As the Data Center costs are primarily for space, power, and cooling of servers, the Exchange allocated 2.0% to the applicable Data Center costs for the market data feeds. The Exchange believes it is reasonable to apply the same proportionate percentage of Data Center costs to that of the Connectivity cost driver.

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[38] The Exchange understands that the Investors Exchange, Inc. ("IEX") and MEMX LLC ("MEMX") both allocated a percentage of their servers to the production and dissemination of market data to support proposed market data fees. See Securities Exchange Act Release Nos. 94630 (April 7, 2022), 87 FR 21945, at page 21949 (April 13, 2022) (SR-IEX-2022-02) and 97130 (March 13, 2023), 88 FR 16491 (March 17, 2023) (SR-MEMX-2023-04). The Exchange does not have insight into either MEMX's or IEX's technology infrastructure or what their determinations were based on. However, the Exchange reviewed its own technology infrastructure and believes based on its design, it is more appropriate for the Exchange to allocate a portion of its Connectivity cost driver to market data based on a percentage of overall cost, not on a per server basis.

Hardware and Software Maintenance and Licenses

Hardware and Software Maintenance and Licenses includes hardware and software licenses used to operate and monitor physical assets necessary to offer the market data feeds.[39] Because the hardware and software license fees are correlated to the servers used by the Exchange, the Exchange again applied an allocation of 2.0% of its costs for Hardware and Software Maintenance and Licenses to the market data feeds. The Exchange notes that this allocation may differ from its affiliates because MIAX Pearl Equities maintains software licenses that are unique to its trading platform and used only for the trading of equity securities. The cost for these licenses cannot be shared with MIAX Pearl Equities' affiliated options markets because each of those platforms trade only options, not equities. MIAX Pearl Equities' affiliates are able to share the cost of many of their software licenses among the multiple options platforms (thus lowering the cost to each individual options platform), whereas MIAX Pearl Equities cannot share such cost and, therefore, bears the entire cost.

Depreciation

All physical assets, software, and hardware used to provide the market data feeds, which also includes assets used for testing and monitoring of Exchange infrastructure to provide market data, were valued at cost, and depreciated or leased over periods ranging from three to five years. Thus, the depreciation cost primarily relates to servers necessary to operate the Exchange, some of which are owned by the Exchange and some of which are leased by the Exchange in order to allow efficient periodic technology refreshes. The Exchange also included in the Depreciation cost driver certain budgeted improvements that the Exchange intends to capitalize and depreciate

[39] This expense may differ from the Exchange's affiliated markets. This is because each market may maintain and utilize a different amount of hardware and software based on its market model and infrastructure needs. The Exchange allocated a percentage of the overall cost based on actual amounts of hardware and software utilized by that market, which resulted in different cost allocations and dollar amounts.

with respect to the market data feeds in the near-term. As with the other allocated costs in the Exchange's updated Cost Analysis, the Depreciation cost was therefore narrowly tailored to depreciation related to the market data feeds. As noted above, the Exchange allocated 0.5% of its allocated depreciation costs to providing the market data feeds.

The vast majority of the software the Exchange uses for its operations to generate and disseminate the market data feeds has been developed in-house over an extended period. This software development also requires quality assurance and thorough testing to ensure the software works as intended. Hardware used to generate and disseminate the market data feeds, which includes servers and other physical equipment the Exchange purchased. Accordingly, the Exchange included depreciation costs related to depreciated hardware and software used to generate and disseminate the market data feeds. The Exchange also included in the Depreciation costs certain budgeted improvements that the Exchange intends to capitalize and depreciate with respect to the market data feeds in the near-term. As with the other allocated costs in the Exchange's updated Cost Analysis, the Depreciation cost was therefore narrowly tailored to depreciation related to the market data feeds.

This allocation is also based on MIAX Pearl Equities being a newer market and having newer physical assets and software subject to depreciation than its affiliate options exchanges. The Exchange's affiliate options exchanges are older markets that have more software and equipment that have been fully depreciated when compared to the newer software and hardware currently being depreciated by MIAX Pearl Equities at higher rates.

Allocated Shared Expenses

Finally, as with other exchange products and services, a portion of general shared expenses was allocated to the provision of the market data feeds. These general shared costs are

integral to exchange operations, including its ability to provide the market data feeds. Costs included in general shared expenses include office space and office expenses (e.g., occupancy and overhead expenses), utilities, recruiting and training, marketing and advertising costs, professional fees for legal, tax and accounting services (including external and internal audit expenses), and telecommunications. Similarly, the cost of paying directors to serve on the Exchange's Board of Directors is also included in the Exchange's general shared expense cost driver.[40] These general shared expenses are incurred by the Exchange's parent company, MIH, as a direct result of operating the Exchange and its affiliated markets.

The Exchange employed a process to determine a reasonable percentage to allocate general shared expenses to the market data feeds pursuant to its multi-layered allocation process. First, general expenses were allocated among the Exchange and affiliated markets as described above. Then, the general shared expense assigned to the Exchange was allocated across core services of the Exchange, including market data. Then, these costs were further allocated to sub-categories within the final categories, i.e., the market data feeds as sub-categories of market data. In determining the percentage of general shared expenses allocated to market data that ultimately apply to the market data feeds, the Exchange looked at the percentage allocations of each of the cost drivers and determined a reasonable allocation percentage. The Exchange also held meetings with senior management, department heads, and the Finance Team to determine the proper amount of the shared general expense to allocate to the market data feeds. The Exchange, therefore, believes it is reasonable to assign an allocation, in the range of allocations for other cost drivers, while continuing to ensure that this expense is only allocated once. Again, the

[40] The Exchange notes that MEMX allocated a precise amount of 10% of the overall cost for directors in a similar non-transaction fee filing. See Securities Exchange Act Release No. 97130 (March 13, 2023), 88 FR 16491 (March 17, 2023) (SR-MEMX-2023-04). The Exchange does not calculate is expenses at that granular a level. Instead, director costs are included as part of the overall general allocation.

general shared expenses are incurred by the Exchange's parent company as a result of operating the Exchange and its affiliated markets and it is therefore reasonable to allocate a percentage of those expenses to the Exchange and ultimately to specific product offerings such as the market data feeds.

Again, a portion of all shared expenses were allocated to the Exchange (and its affiliated markets) which, in turn, allocated a portion of that overall allocation to all market data products offered by the Exchange. The Exchange then allocated 2.0% of the portion allocated to market data. The Exchange believes this allocation percentage is reasonable because, while the overall dollar amount may be higher than other cost drivers, the 2.0% is based on and in line with the percentage allocations of each of the Exchange's other cost drivers. The percentage allocated to the market data feeds also reflects its importance to the Exchange's strategy and necessity towards the nature of the Exchange's overall operations, which is to provide a resilient, highly deterministic trading system that relies on faster market data feeds than the Exchange's competitors to maintain premium performance. This allocation reflects the Exchange's focus on providing and maintaining high performance market data services, of which the market data feeds are main contributors.

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Cost Analysis – Additional Discussion

In conducting its Cost Analysis, the Exchange did not allocate any of its expenses in full to any core service (including market data) and did not double-count any expenses. Instead, as described above, the Exchange allocated applicable cost drivers across its core services and used the same Cost Analysis to form the basis of this proposal and the filings the Exchange recently submitted proposing fees for certain connectivity and ports offered by the Exchange. For

instance, in calculating the Human Resources expenses to be allocated to market data based upon the above described methodology, the Exchange has a team of employees dedicated to network infrastructure and with respect to such employees the Exchange allocated network infrastructure personnel with a high percentage of the cost of such personnel (9.1%) given their focus on functions necessary to provide market data and the remaining 90.9% was allocated to connectivity services, port services, transaction services, and membership services. The Exchange did not allocate any other Human Resources expense for providing market data to any other employee group, outside of a smaller allocation of 8.8% for the market data feeds of the cost associated with certain specified personnel who work closely with and support network infrastructure personnel.

In total, the Exchange allocated 8.9% of its personnel costs (Human Resources) to providing the market data feeds. In turn, the Exchange allocated the remaining 91.1% of its Human Resources expense to membership services, transaction services, connectivity services, and port services. Thus, again, the Exchange's allocations of cost across core services were based on real costs of operating the Exchange and were not double-counted across the core services or their associated revenue streams.

As another example, the Exchange allocated depreciation expense to all core services, including market data, but in different amounts. The Exchange believes it is reasonable to allocate the identified portion of such expense because such expense includes the actual cost of the computer equipment, such as dedicated servers, computers, laptops, monitors, information security appliances and storage, and network switching infrastructure equipment, including switches and taps that were purchased to operate and support the network. Without this equipment, the Exchange would not be able to operate the network and provide the market data

feeds to its Equity Members and their customers. However, the Exchange did not allocate all of the depreciation and amortization expense toward the cost of providing the market data feeds, but instead allocated approximately 0.5% of the Exchange's overall depreciation and amortization expense to the market data feeds combined. The Exchange allocated the remaining depreciation and amortization expense (99.5%) toward the cost of providing transaction services, membership services, connectivity services, and port services.

The Exchange notes that its revenue estimates are based on projections across all potential revenue streams and will only be realized to the extent such revenue streams actually produce the revenue estimated. The Exchange does not yet know whether such expectations will be realized. For instance, in order to generate the revenue expected from the market data feeds, the Exchange will have to be successful in retaining existing clients that wish to maintain subscriptions to those market data feeds or in obtaining new clients that will purchase such services. Similarly, the Exchange will have to be successful in retaining a positive net capture on transaction fees in order to realize the anticipated revenue from transaction pricing.

The Exchange notes that the Cost Analysis is based on the Exchange's 2024 fiscal year of operations and projections. It is possible, however, that actual costs may be higher or lower. To the extent the Exchange sees growth in use of market data services it will receive additional revenue to offset future cost increases. However, if use of market data services is static or decreases, the Exchange might not realize the revenue that it anticipates or needs in order to cover applicable costs. Accordingly, the Exchange is committing to conduct a one-year review after implementation of these fees. The Exchange expects that it may propose to adjust fees at that time, to increase fees in the event that revenues fail to cover costs and a reasonable mark-up of such costs. Similarly, the Exchange may propose to decrease fees in the event that revenue

materially exceeds our current projections. In addition, the Exchange will periodically conduct a review to inform its decision making on whether a fee change is appropriate (e.g., to monitor for costs increasing/decreasing or subscribers increasing/decreasing, etc. in ways that suggest the then-current fees are becoming dislocated from the prior cost-based analysis) and would propose to increase fees in the event that revenues fail to cover its costs and a reasonable mark-up, or decrease fees in the event that revenue or the mark-up materially exceeds our current projections. In the event that the Exchange determines to propose a fee change, the results of a timely review, including an updated cost estimate, will be included in the rule filing proposing the fee change. More generally, the Exchange believes that it is appropriate for an exchange to refresh and update information about its relevant costs and revenues in seeking any future changes to fees, and the Exchange commits to do so.

Projected Revenue[41]

The proposed fees will allow the Exchange to cover certain costs incurred by the Exchange associated with creating, generating, and disseminating the market data feeds and the fact that the Exchange will need to fund future expenditures (increased costs, improvements, etc.). The Exchange routinely works to improve the performance of the network's hardware and software. The costs associated with maintaining and enhancing a state-of-the-art exchange network is a significant expense for the Exchange, and thus the Exchange believes that it is reasonable and appropriate to help offset those costs by amending fees for market data subscribers. Subscribers, particularly those of the market data feeds, expect the Exchange to provide this level of support so they continue to receive the performance they expect. This

41 To estimate the potential number of subscribers and their anticipated use after the proposed fees are implemented, the Exchange surveyed and reviewed its current subscriber base, considered the number of current potential subscribers who may unsubscribe due to the proposed fees being implemented, and sought informal feedback from Equity Members and other subscribers.

differentiates the Exchange from its competitors. As detailed above, the Exchange has five primary sources of revenue that it can potentially use to fund its operations: transaction fees, fees for connectivity services, membership and regulatory fees, and market data fees. Accordingly, the Exchange must cover its expenses from these five primary sources of revenue.

The Exchange's Cost Analysis estimates the annual cost to provide the market data feeds will equal $1,800,360. Based on projected subscribers and Users, the Exchange would generate annual revenue of approximately $1,980,000 for the market data feeds. The Exchange believes this represents a modest profit of 9.1% when compared to the cost of providing the market data feeds, which the Exchange believes is fair and reasonable after taking into account the costs related to creating, generating, and disseminating the market data feeds and the fact that the Exchange will need to fund future expenditures (increased costs, improvements, etc.).

Based on the above discussion, the Exchange believes that even if the Exchange earns the above revenue or incrementally more or less, the proposed fees are fair and reasonable because they will not result in pricing that deviates from that of other exchanges or a supra-competitive profit, when comparing the total expense of the Exchange associated with providing the market data feeds versus the total projected revenue also associated with those market data feeds.

The Exchange did not charge any fees for the market data feeds since its inception in September 2020 and its allocation of costs to the market data feeds was part of a holistic allocation that also allocated costs to other core services without double-counting any expenses. The Exchange is owned by a holding company that is the parent company of four exchange markets and, therefore, the Exchange and its affiliated markets must allocate shared costs across all of those markets accordingly, pursuant to the above-described allocation methodology. In contrast, IEX and MEMX, which are currently each operating only one SRO, in their recent non-

transaction fee filings allocate the entire amount of that same cost to a single SRO. This can result in lower profit margins for the non-transaction fees proposed by IEX and MEMX because the single allocated cost does not experience the efficiencies and synergies that result from sharing costs across multiple platforms.[42] The Exchange and its affiliated markets often share a single cost, which results in cost efficiencies that can cause a broader gap between the allocated cost amount and projected revenue, even though the fee levels being proposed are lower or competitive with competing markets (as described above). To the extent that the application of a cost-based standard results in Commission Staff making determinations as to the appropriateness of certain profit margins, the Commission Staff should consider whether the proposed fee level is comparable to, or competitive with, the same fee charged by competing exchanges and how different cost allocation methodologies (such as across multiple markets) may result in different profit margins for comparable fee levels. If Commission Staff is making determinations as to appropriate profit margins, the Exchange believes that the Commission should be clear to all market participants as to what they have determined is an appropriate profit margin and should apply such determinations consistently and, in the case of certain legacy exchanges, retroactively, if such standards are to avoid having a discriminatory effect. Further, the proposal reflects the Exchange's efforts to control its costs, which the Exchange does on an ongoing basis as a matter of good business practice. A potential profit margin should not be judged alone based on its size, but is also indicative of costs management and whether the ultimate fee reflects

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[42] The Exchange acknowledges that IEX included in its proposal to adopt market data fees after offering market data for free an analysis of what its projected revenue would be if all of its existing customers continued to subscribe versus what its projected revenue would be if a limited number of customers subscribed due to the new fees. See Securities Exchange Act Release No. 94630 (April 7, 2022), 87 FR 21945 (April 13, 2022) (SR-IEX-2022-02). MEMX did not include a similar analysis in its recent filing to adopt market data fees. See Securities Exchange Act Release No. 97130 (March 13, 2023), 88 FR 16491 (March 17, 2023) (SR-MEMX-2023-04).

the value of the services provided. For example, a profit margin on one exchange should not be deemed excessive where that exchange has been successful in controlling its costs, but not excessive where on another exchange where that exchange is charging comparable fees but has a lower profit margin due to higher costs. Doing so could have the perverse effect of not incentivizing cost control where higher costs alone are used to justify fees increases.

Accordingly, while the Exchange is supportive of transparency around costs and potential margins (applied across all exchanges), as well as periodic review of revenues and applicable costs (as discussed below), the Exchange does not believe that these estimates should form the sole basis of whether or not a proposed fee is reasonable or can be adopted. Instead, the Exchange believes that the information should be used solely to confirm that an Exchange is not earning – or seeking to earn – supra-competitive profits, the standard set forth in the Staff Guidance. The Exchange believes the Cost Analysis and related projections in this filing demonstrate this fact.

The Exchange notes that the Cost Analysis is based on the Exchange's 2024 fiscal year of operations and projections. It is possible, however, that such costs will either decrease or increase. To the extent the Exchange sees growth in use of market data feeds it will receive additional revenue to offset future cost increases. However, if use of market data feeds is static or decreases, the Exchange might not realize the revenue that it anticipates or needs in order to cover applicable costs. Accordingly, the Exchange is committing to conduct a one-year review after implementation of these fees. The Exchange expects that it may propose to adjust fees at that time, to increase fees in the event that revenues fail to cover costs and a reasonable mark-up of such costs.

Similarly, the Exchange expects that it would propose to decrease fees in the event that revenue materially exceeds current projections. In addition, the Exchange will periodically conduct a review to inform its decision making on whether a fee change is appropriate (e.g., to monitor for costs increasing/decreasing or subscribers increasing/decreasing, etc. in ways that suggest the then-current fees are becoming dislocated from the prior cost-based analysis) and expects that it would propose to increase fees in the event that revenues fail to cover its costs and a reasonable mark-up, or decrease fees in the event that revenue or the mark-up materially exceeds current projections. In the event that the Exchange determines to propose a fee change, the results of a timely review, including an updated cost estimate, will be included in the rule filing proposing the fee change. More generally, the Exchange believes that it is appropriate for an exchange to refresh and update information about its relevant costs and revenues in seeking any future changes to fees, and the Exchange commits to do so.

The Proposed Fees are Reasonable and Comparable to the Fees Charged By Other Exchanges for Similar Data Products

Overall. Among other things, the Exchange relying upon a cost-plus model to determine a reasonable fee structure that is informed by the Exchange's understanding of different uses of the products by different types of participants. In this context, the Exchange believes the proposed fees overall are fair and reasonable as a form of cost recovery plus the possibility of a reasonable return for the Exchange's aggregate costs of offering the market data feeds. The Exchange believes the proposed fees are reasonable because they are designed to generate annual revenue to recoup some or all of Exchange's annual costs of providing the market data feeds with a reasonable mark-up. As discussed above, the Exchange estimates this fee filing will result in annual revenue of approximately $1,980,000, representing a potential mark-up of just 9.1% over the cost of providing market data feeds. Accordingly, the Exchange believes that this fee

methodology is reasonable because it allows the Exchange to recoup all of its expenses for providing the market data feeds (with any additional revenue representing no more than what the Exchange believes to be a reasonable rate of return). The Exchange also believes that the proposed fees are reasonable because they are generally less than the fees charged by competing equities exchanges for comparable market data products, notwithstanding that the competing exchanges may have different system architectures that may result in different cost structures for the provision of market data.

The Exchange also believes the proposed fees are reasonable when compared to fees charged for comparable products by other exchanges, including comparable data feeds priced significantly higher than the Exchange's proposed fees. Overall, the Exchange's proposed fees are generally lower or similar to fees charged by other exchanges.[43] For this reason, the Exchange believes that the proposed fees are consistent with the Act generally, and Section 6(b)(5)[44] of the Act in particular. The Exchange believes that denying it the ability to adopt the proposed fees that would allow the Exchange to recoup its costs with a reasonable margin in a manner that is closer to parity with other exchanges, in effect, impedes its ability to compete, including in its pricing of transaction fees and ability to invest in competitive infrastructure and other offerings.

Internal Distribution Fees. The Exchange believes that it is reasonable to charge fees to access the market data feeds for Internal Distribution because of the value of such data to

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43 See MEMX Fee Schedule, available at, https://info.memxtrading.com/membership-fees/ ("MEMX Fee Schedule"); Cboe BYX Fee Schedule, available at, https://www.cboe.com/us/equities/membership/fee_schedule/byx/; Cboe BZX Fee Schedule, available at, https://www.cboe.com/us/equities/membership/fee_schedule/bzx/; Cboe EDGA Fee Schedule, available at, https://www.cboe.com/us/equities/membership/fee_schedule/edga/; and Cboe EDGX Fee Schedule, available at, https://www.cboe.com/us/equities/membership/fee_schedule/edgx/.

44 15 U.S.C. 78f(b)(5).

subscribers in their profit-generating activities. The Exchange also believes that the proposed monthly Internal Distribution fees are reasonable because they are similar to the amount charged by other exchanges for comparable data products. Specifically, the Exchange proposes to charge a monthly fee of $1,000.00 to Internal Distributors for the ToM feed and $2,000.00 for the DoM feed, both of which include last sale information. MEMX, Cboe BZX, and Cboe EDGX each charge Internal Distributors a monthly fee of $750.00 per month for their top-of-book products and $1,500.00 for their depth-of-book products, and charges separately for last sale information.[45] The Exchange notes that while its proposed fee for Internal Distributors may be slightly higher than these other exchanges, its other proposed fees are either equal to or significantly lower than other exchanges, as discussed below.

External Distribution Fees. The Exchange believes that it is reasonable to charge External Distribution fees for the market data feeds because vendors receive value from redistributing the data in their business products provided to their customers. The Exchange believes that charging External Distribution fees is reasonable because the vendors that would be charged such fees profit by re-transmitting the Exchange's market data to their customers. These fees would be charged only once per month to each vendor account that redistributes any of the market data feeds, regardless of the number of customers to which that vendor redistributes the data.

The Exchange also believes that the proposed monthly External Distribution fees are reasonable because they are equal to or lower than the amount charged by other exchanges for comparable data products. Specifically, the Exchange proposes to charge a monthly fee of $2,000.00 to External Distributor for the ToM feed and $2,500.00 for the DoM feed. The

[45] See MEMX Fee Schedule, supra note 43.

Exchange's proposed External Distribution fee for ToM is equal to or lower than the fees charged by MEMX, Cboe BZX, and Cboe EDGX to External Distributors of their depth-of-book products, who each charge $2,000.00, $2,500.00, and $2,250.00, respectively.[46] Meanwhile, the Exchange's proposed External Distribution fee for DoM is equal to the fees charged by MEMX, Cboe BYX, Cboe EDGA, and Cboe EDGX to External Distributors of their depth-of-book products.[47] Meanwhile, the Exchange's proposed External Distribution fee for DoM is lower than the $5,000.00 fee charged by Cboe BZX to External Distributors of its depth-of-book product.[48]

User Fees. The Exchange believes that having separate Professional and Non-Professional User fees for the market data feeds is reasonable because it will make the product more affordable and result in greater availability to Professional and Non-Professional Users. Setting a modest Non-Professional User fee is reasonable because it provides an additional method for Non-Professional Users to access the market data feeds by providing the same data that is available to Professional Users. The proposed monthly Professional User and Non-Professional User fees are reasonable because they equal to or are lower than the fees charged by other exchanges for comparable data products. For example, the Exchange's proposed Professional User fees of $2.00 for ToM and $30.00 for DoM is lower than the same fee charged by Cboe BZX and Cboe EDGX, who each charge $4.00 for their top-of-book products and

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46 See MEMX Fee Schedule, Cboe BZX Fee Schedule, and Cboe EDGX Fee Schedule, supra note 43.

47 See MEMX Fee Schedule, Cboe BYX Fee Schedule, Cboe EDGA Fee Schedule, and Cboe EDGX Fee Schedule, id.

48 See Cboe BZX Fee Schedule, id.

$40.00 for their depth-of-book products.[49] The Exchange's proposed Non-Professional User fees of $0.10 for ToM is equal to the same fee charged by Cboe BZX and Cboe EDGX.[50]

Meanwhile, the Exchange's proposed Non-Professional User fees of $3.00 for DoM is equal to the same fee charged by MEMX and lower than the same fee charged by Cboe BZX and Cboe EDGX, who each charge $5.00 for their depth-of-book products.[51]

The Exchange also believes that the proposal to require reporting of individual Users, but not devices, is reasonable as this too will eliminate unnecessary audit risk that can arise when recipients are required to apply complex counting rules such as whether or not to count devices or whether an individual accessing the same data through multiple devices should be counted once or multiple times.

The Exchange also believes it is reasonable to adopt an Enterprise Fee because this would allow a market participant to disseminate such data feeds to an unlimited number of Users without the necessity of counting such Users. As this is an optional subscription, a data recipient is able to determine whether it prefers to count Users and report such Users to the Exchange or not, and also whether it is more economically advantageous to count and pay for specific Users or to subscribe to the Enterprise Fee. The Exchange also notes that only a market participant with a substantial number of Users would likely choose to subscribe for and pay the Enterprise Fee.

The proposed monthly Enterprise fees are reasonable because they equal to or are lower than the fees charged by other exchanges for comparable data products. For example, the Exchange's proposed Enterprise fee of $15,000.00 per month for ToM equals the same fee

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49 See Cboe BZX Fee Schedule and Cboe EDGX Fee Schedule, id.

50 Id.

51 See MEMX Fee Schedule, Cboe BZX Fee Schedule, and Cboe EDGX Fee Schedule, supra note 43.

charged by Cboe BZX and Cboe EDGX.[52] However, the Exchange's proposed Enterprise fee of $25,000.00 per month for DoM is much lower than the same fee charged by Cboe BZX and Cboe EDGX, who each charge $100,000.00 per month.[53]

Non-Display Use Fees. The Exchange believes the proposed Non-Display Usage fees are reasonable because they reflect the value of the data to the data recipients in their profit-generating activities and do not impose the burden of counting non-display devices.

The Exchange believes that the proposed Non-Display Usage fees reflect the significant value of the non-display data use to data recipients, whom purchase such data on a voluntary basis. Non-display data can be used by data recipients for a wide variety of profit-generating purposes, including proprietary and agency trading and smart order routing, as well as by data recipients that operate Trading Platforms that compete directly with the Exchange for order flow. The data also can be used for a variety of non-trading purposes that indirectly support trading, such as risk management and compliance. Although some of these non-trading uses do not directly generate revenues, they can nonetheless substantially reduce a recipient's costs by automating such functions so that they can be carried out in a more efficient and accurate manner and reduce errors and labor costs, thereby benefiting recipients. The Exchange believes that charging for non-trading uses is reasonable because data recipients can derive substantial value from such uses, for example, by automating tasks so that can be performed more quickly and accurately and less expensively than if they were performed manually.

Previously, the non-display use data pricing policies of many exchanges required customers to count, and the exchanges to audit the count of, the number of non-display devices

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[52] See Cboe BZX Fee Schedule and Cboe EDGX Fee Schedule, id.

[53] Id.

used by a customer. As non-display use grew more prevalent and varied, however, exchanges received an increasing number of complaints about the impracticality and administrative burden associated with that approach. In response, several exchanges developed a non-display use pricing structure that does not require non-display devices to be counted or those counts to be audited, and instead categorizes different types of use. The Exchange proposes to distinguish between non-display use for the operation of a Trading Platform and other non-display use, which is similar to exchanges such as MEMX, BZX, and EDGX,[54] while other exchanges maintain additional categories and in many cases charge multiple times for different types of non-display use or the operation of multiple Trading Platforms.[55]

The Exchange believes that it is reasonable to segment the fee for non-display use into these two categories. As noted above, the uses to which customers can put the market data feeds are numerous and varied, and the Exchange believes that charging separate fees for these separate categories of use is reasonable because it reflects the actual value the customer derives from the data, based upon how the customer makes use of the data.

The Exchange believes that the proposed fees for Non-Display Usage for ToM are reasonable because the Exchange's proposed fee of $1,000.00 per month is less than the amounts charged by several other exchanges for comparable data products.[56] The Exchange also believes that the proposed fees for Non-Display Usage for DoM are reasonable because the Exchange's proposed fee of $2,500.00 per month for DoM equals the same fee charged by MEMX for its

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54 See Cboe BZX Fee Schedule and Cboe EDGX Fee Schedule, id.

55 See NYSE Proprietary Market Data Pricing Guide, dated May 4, 2022, available at https://www.nyse.com/publicdocs/nyse/data/NYSE_Market_Data_Pricing.pdf, and the Nasdaq Global Data Products pricing list, available at https://nasdaqtrader.com/Trader.aspx?id=DPUSdata.

56 Id.

depth-of-book product.[57] The proposed fees are also significantly less than the amounts charged by several other exchanges for comparable data products.[58] In fact, the Exchange's proposed fees for Non-Display Usage fee may be even lower because the Exchange would allow subscribers to the DoM feed to also receive the ToM feed for no additional charge. The Exchange believes that the proposed fees directly and appropriately reflect the significant value of using data on a non-display basis in a wide range of computer-automated functions relating to both trading and non-trading activities and that the number and range of these functions continue to grow through innovation and technology developments. Further, the Exchange benefits from other non-display use by market participants (including the fact that the Exchange receives orders resulting from algorithms and routers) and both the Exchange and other participants benefit from other non-display use by market participants when such use is to support more broadly beneficial functions such as risk management and compliance.

The Exchange believes that the proposed fees for Non-Display Usage for ToM are reasonable because the Exchange's proposed fee of $2,500.00 per month is less than the amounts charged by several other exchanges for comparable data products,[59] which also charge per Trading Platform operated by a data subscriber subject to a cap in most cases, rather than charging per subscriber, as proposed by the Exchange.[60] The Exchange also believes that it is reasonable to charge the proposed fees for non-display use for operation of a Trading Platform of the DoM feed because its proposed fee of $2,500.00 per month equals the same fee charged by

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57 See MEMX Fee Schedule, supra note 43.

58 See supra note 55.

59 Id.

60 See supra note 55. The Exchange notes that MEMX also charges per subscriber, as proposed herein. See MEMX Fee Schedule supra note 43.

MEMX for its depth-of-book product.[61] The proposed fees are also significantly less than the amounts charged by Cboe BZX and Cboe EDGA, who each charge $5,000.00 per month, for comparable data products.[62] In fact, the Exchange's proposed fees for Non-Display Usage fee for Trading Platform may be even lower because the Exchange would allow subscribers to the DoM feed to also receive the ToM feed for no additional charge. The proposed fee is also significantly less than the amounts charged by several other exchanges for comparable data products, which also charge per Trading Platform operated by a data subscriber subject to a cap in most cases, rather than charging per subscriber, as proposed by the Exchange.[63] With respect to alternative trading systems, or ATSs, such platforms can utilize the Exchange Data Feeds to form prices for trading on such platforms but are not required to do so and can instead utilize SIP data. Currently, no ATS approved to trade NMS stocks subscribes to the Exchange's market data feeds.[64] With respect to other exchanges, which may choose to use the market data feeds for Regulation NMS compliance and order routing, the Exchange notes that several exchange competitors of the Exchange have not subscribed to any of the market data feeds and instead utilize SIP data for such purposes.[65] Accordingly, both ATSs and other exchanges clearly have a choice whether to subscribe to the Exchange's market data feeds.

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61 Id.

62 See Cboe BZX Fee Schedule and Cboe EDGX Fee Schedule, supra note 43. See also supra note 55.

63 See supra note 55. The Exchange notes that MEMX also charges per subscriber, as proposed herein. See MEMX Fee Schedule supra note 43.

64 MIAX Pearl Equities internal data regarding non-display use by Trading Platforms. As of March 15, 2024, there were currently 32 ATSs that had filed an effective Form ATS-N with the Commission to trade NMS stocks. See https://www.sec.gov/divisions/marketreg/form-ats-n-filings.htm#ats-n.

65 See, e.g., BZX Rule 11.26, EDGA Rule 13.4, EDGX Rule 13.4, and Long Term Stock Exchange, Inc. Rule 11.4010(a), each of which discloses the data feeds used by each respective exchange and state that SIP products are used with respect to MIAX Pearl Equities.

The proposed Non-Display Usage fees are also reasonable because they take into account the extra value of receiving the data for Non-Display Usage that includes a rich set of information including top of book quotations, depth-of-book quotations, executions and other information. The Exchange believes that the proposed fees directly and appropriately reflect the significant value of using the market data feeds on a non-display basis in a wide range of computer-automated functions relating to both trading and non-trading activities and that the number and range of these functions continue to grow through innovation and technology developments.[66]

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For all of the foregoing reasons, the Exchange believes that the proposed fees for the market data feeds are reasonable.

There are Reasonable Substitutes for the Market Data Feeds

Each equities exchange offers top-of-book quotation and last sale information based on their own quotation and trading activity that is substantially similar to the information provided by the Exchange through the ToM data feed. Further, the quote and last sale data contained in the ToM data feed is identical to the data sent to the securities information processors ("SIPs") distributing consolidated data pursuant to the CTA/CQ Plan and the UTP Plan.[67] Accordingly, market participants can substitute ToM data with feeds from other exchanges and/or through the

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66 See also Exchange Act Release No. 69157 (March 18, 2013), 78 FR 17946, 17949 (March 25, 2013) (SR-CTA/CQ-2013-01) ("[D]ata feeds have become more valuable, as recipients now use them to perform a far larger array of non-display functions. Some firms even base their business models on the incorporation of data feeds into black boxes and application programming interfaces that apply trading algorithms to the data, but that do not require widespread data access by the firm's employees. As a result, these firms pay little for data usage beyond access fees, yet their data access and usage is critical to their businesses.").

67 The Exchange notes that it makes available to subscribers that is included in the ToM data feed no earlier than the time at which the Exchange sends that data to the SIPs.

SIPs. Exchange top-of-book data is therefore widely available today from a number of different sources.

The Exchange notes DoM is entirely optional. The Exchange is not required to make the proprietary data products that are the subject of this proposed rule change available or to offer any specific pricing alternatives to any customers, nor is any firm or investor required to purchase the Exchange's data products. Unlike some other data products (e.g., the consolidated quotation and last-sale information feeds) that firms are required to purchase in order to fulfil regulatory obligations,[68] a customer's decision whether to purchase any of the Exchange's proprietary market data feeds is entirely discretionary. Most firms that choose to subscribe to proprietary market data feeds from the Exchange and its affiliates do so for the primary goals of using them to increase their revenues, reduce their expenses, and in some instances compete directly with the Exchange's trading services. Such firms are able to determine for themselves whether or not the products in question or any other similar products are attractively priced. If market data feeds from the Exchange and its affiliates do not provide sufficient value to firms based on the uses those firms may have for it, such firms may simply choose to conduct their business operations in ways that do not use the products.

Equitable Allocation

Overall. The Exchange believes that its proposed fees are reasonable, fair, and equitable, and not unfairly discriminatory because they are designed to align fees with services provided. The Exchange believes the proposed fees for the market data feeds are allocated fairly and

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68 The Exchange notes that broker-dealers are not required to purchase proprietary market data to comply with their best execution obligations. See In the Matter of the Application of Securities Industry and Financial Markets Association for Review of Actions Taken by Self-Regulatory Organizations, Release Nos. 34-72182; AP-3-15350; AP-3-15351 (May 16, 2014). Similarly, there is no requirement in Regulation NMS or any other rule that proprietary data be utilized for order routing decisions, and some broker-dealers and ATSs have chosen not to do so.

equitably among the various categories of users of the feeds, and any differences among categories of users are justified and appropriate.

The Exchange believes that the proposed fees are equitably allocated because they will apply uniformly to all data recipients that choose to subscribe to the market data feeds. Any subscriber or vendor that chooses to subscribe to the market data feeds is subject to the same Fee Schedule, regardless of what type of business they operate, and the decision to subscribe to one or more market data feeds is based on objective differences in usage of market data feeds among different Equity Members, which are still ultimately in the control of any particular Equity Member. The Exchange believes the proposed pricing of the market data feeds is equitably allocated because it is based, in part, upon the amount of information contained in each data feed and the value of that information to market participants.

Internal Distributor Fees. The Exchange believes the proposed monthly fees for Internal Distributors of the market data feeds are equitably allocated because they would be charged on an equal basis to all data recipients that receive the market data feeds for internal distribution, regardless of what type of business they operate.

External Distributor Fees. The Exchange believes the proposed monthly fees for External Distributors of the market data feeds are equitably allocated and not unfairly discriminatory because they would be charged on an equal basis to all data recipients that receive the market data feeds that choose to redistribute the feeds externally, regardless of what business they operate. The Exchange also believes that the proposed monthly fees for External Distributors are equitably allocated when compared to lower proposed fees for Internal Distributors because data recipients that are externally distributing market data feeds are able to monetize such distribution and spread such costs amongst multiple third party data recipients,

whereas the Internal Distributor fee is applicable to use by a single data recipient (and its affiliates).

The Exchange believes that it is reasonable and equitable discriminatory to assess Internal Distributors fees that are less than the fees assessed for External Distributors for subscriptions to the market data feeds because Internal Distributors have limited, restricted usage rights to the market data, as compared to External Distributors, which have more expansive usage rights. All Equity Members and non-Equity Members that decide to receive any market data feed of the Exchange must first execute, among other things, the MIAX Exchange Group Exchange Data Agreement (the "Exchange Data Agreement").[69] Pursuant to the Exchange Data Agreement, Internal Distributors are restricted to the "internal use" of any market data they receive. This means that Internal Distributors may only distribute the Exchange's market data to the recipient's officers and employees and its affiliates.[70] External Distributors may distribute the Exchange's market data to persons who are not officers, employees or affiliates of the External Distributor,[71] and may charge their own fees for the redistribution of such market data. External Distributors may monetize their receipt of the market data feeds by charging their customers fees for receipt of the Exchange's market data feeds. Internal Distributors do not have the same ability to monetize the Exchange's market data feeds. Accordingly, the Exchange believes it is fair, reasonable and not unfairly discriminatory to assess External Distributors a higher fee for the Exchange's market data feeds as External Distributors have greater usage rights to commercialize such market data and can adjust their own fee structures if necessary.

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69 See Exchange Data Agreement, available at https://www.miaxglobal.com/markets/us-equities/pearl-equities/market-data-vendor-agreements.

70 See id.

71 See id.

The Exchange also utilizes more resources to support External Distributors versus Internal Distributors, as External Distributors have reporting and monitoring obligations that Internal Distributors do not have, thus requiring additional time and effort of Exchange staff. For example, External Distributors have monthly reporting requirements under the Exchange's Market Data Policies.[72] Exchange staff must then, in turn, process and review information reported by External Distributors to ensure the External Distributors are redistributing the market data feeds in compliance with the Exchange's Market Data Agreement and Policies.

The Exchange believes the proposed fees are equitable because the fee level results in a reasonable and equitable allocation of fees amongst subscribers for similar services, depending on whether the subscriber is an Internal or External Distributor. Moreover, the decision as to whether or not to purchase market data is entirely optional to all market participants. Potential purchasers are not required to purchase the market data, and the Exchange is not required to make the market data available. Purchasers may request the data at any time or may decline to purchase such data. The allocation of fees among users is fair and reasonable because, if market participants decide not to subscribe to the data feed, firms can discontinue their use of the market data feeds.

User Fees. The Exchange believes that the fee structure differentiating Professional User fees from Non-Professional User fees for display use is equitable. This structure has long been used by other exchanges and the SIPs to reduce the price of data to Non-Professional Users and make it more broadly available.[73] Offering the market data feeds to Non-Professional Users at a

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72 See Section 6 of the Exchange's Market Data Agreement, supra note 69.

73 See, e.g., Securities Exchange Act Release No. 59544 (March 9, 2009), 74 FR 11162 (March 16, 2009) (SR-NYSE-2008-131) (establishing the $15 Non-Professional User Fee (Per User) for NYSE OpenBook); Securities Exchange Act Release No. 20002, File No. S7-433 (July 22, 1983), 48 FR 34552 (July 29, 1983) (establishing Non-Professional fees for CTA data); NASDAQ BX Equity 7 Pricing Schedule, Section 123.

lower cost than Professional Users results in greater equity among data recipients, as Professional Users are categorized as such based on their employment and participation in financial markets, and thus, are compensated to participate in the markets. While Non-Professional Users too can receive significant financial benefits through their participation in the markets, the Exchange believes it is reasonable to charge more to those Users who are more directly engaged in the markets.

The Exchange believes it is equitable to adopt User fees for the DoM feed that are higher than the User fees for the ToM feed because, as described above, DoM contains significantly more data than the ToM feed. The Exchange believes it is equitable to have pricing based, in part, upon the amount of information contained in each data feed and the value of that information to market participants.

The Exchange also believes it is equitable to adopt an Enterprise Fee because this would allow a market participant to disseminate such data feeds to an unlimited number of Users without the necessity of counting such Users. As this is an optional subscription, a data recipient is able to determine whether it prefers to count Users and report such Users to the Exchange or not, and also whether it is more economically advantageous to count and pay for specific Users or to subscribe to the Enterprise Fee.

Non-Display Use Fees. The Exchange believes the proposed Non-Display Usage fees are equitably allocated because they would require subscribers to pay fees only for the uses they actually make of the data. As noted above, non-display data can be used by data recipients for a wide variety of profit-generating purposes (including trading and order routing) as well as purposes that do not directly generate revenues (such as risk management and compliance) but nonetheless substantially reduce the recipient's costs by automating certain functions. The

Exchange believes that it is equitable to charge non-display data subscribers that use the market data feeds for purposes other than operation of a Trading Platform as proposed because all such subscribers would have the ability to use such data for as many non-display uses as they wish for one low fee. As noted above, this structure is comparable to that in place for the BZX Depth feed but several other exchanges charge multiple non-display fees to the same client to the extent they use a data feed in several different trading platforms or for several types of non-display use.[74]

The Exchange further believes that the fees for non-display use for operation of a Trading Platform and for non-display use other than operation of a Trading Platform are equitable because the Exchange is imposing the same flat fee for each category of non-display use.

The Exchange believes that it is equitable to charge a single fee per subscriber rather than multiple fees for a subscriber that operates more than one Trading Platform because operators of Trading Platforms are many times viewed as a single competing venue or group, even if there are multiple liquidity pools operated by the same competitor.

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For all of the foregoing reasons, the Exchange believes that the proposed fees for the market data feeds are equitably allocated.

The Proposed Fees Are Not Unfairly Discriminatory

The Exchange believes the proposed fees are not unfairly discriminatory because any differences in the application of the fees are based on meaningful distinctions between customers, and those meaningful distinctions are not unfairly discriminatory between customers.

[74] See supra note 55.

Overall. The Exchange believes that the proposed fees are not unfairly discriminatory because they would apply to all data recipients that choose to subscribe to the same market data feed(s). Any vendor or subscriber that chooses to subscribe to the market data feeds is subject to the same Fee Schedule, regardless of what type of business they operate. Because the proposed fees for DoM are higher, vendors and subscribers seeking lower cost options may instead choose to receive data from the SIPs or through the ToM feed for a lower cost. Alternatively, vendors and subscribers can choose to pay for the DoM feed to receive data in a single feed with depth-of-book information if such information is valuable to such vendors or subscribers. The Exchange notes that vendors or subscribers can also choose to subscribe to a combination of data feeds for redundancy purposes or to use different feeds for different purposes. In sum, each vendor or subscriber has the ability to choose the best business solution for itself. The Exchange does not believe it is unfairly discriminatory to base pricing upon the amount of information contained in each data feed and the value of that information to market participants. As described above, the ToM feed can be utilized to trade on the Exchange but contain less information than that is available on the DoM feed (i.e., even for a subscriber who takes both feeds, such feeds do not contain depth-of-book information). Thus, the Exchange believes it is not unfairly discriminatory for the products to be priced as proposed, with ToM having the lowest price and DoM a higher price.

Internal Distributor Fees. The Exchange believes the proposed monthly fees for Internal Distributors are not unfairly discriminatory because they would be charged on an equal basis to all data recipients that receive the same market data feed(s) for internal distribution, regardless of what type of business they operate.

External Distributor Fees. The Exchange believes the proposed monthly fees for redistributing the market data feeds are not unfairly discriminatory because they would be charged on an equal basis to all data recipients that receive the same market data feed(s) that choose to redistribute the feed(s) externally. The Exchange also believes that having higher monthly fees for External Distributors than Internal Distributors is not unfairly discriminatory because data recipients that are externally distributing the market data feeds are able to monetize such distribution and spread such costs amongst multiple third party data recipients, whereas the Internal Distributor fee is applicable to use by a single data recipient (and its affiliates).

User Fees. The Exchange believes that the fee structure differentiating Professional User fees from Non-Professional User fees for display use is not unfairly discriminatory. This structure has long been used by other exchanges and the SIPs to reduce the price of data to Non-Professional Users and make it more broadly available.[75] Offering the market data feeds to Non-Professional Users with the same data as is available to Professional Users, albeit at a lower cost, results in greater equity among data recipients. These User fees would be charged uniformly to all individuals that have access to the market data feeds based on the category of User.

The Exchange also believes the proposed User fees for DoM are not unfairly discriminatory, with higher fees for Professional Users than Non-Professional Users, because Non-Professional Users may have less ability to pay for such data than Professional Users as well as less opportunity to profit from their usage of such data. The Exchange also believes the proposed User fees for DoM are not unfairly discriminatory, even though substantially higher than the proposed User fees for ToM because, as described above, DoM has significantly more information than ToM and is thus potentially more valuable to such Users.

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[75] See supra note 73.

The Exchange further believes that its proposal to adopt an Enterprise Fee is not unfairly discriminatory because this optional alternatives to counting and paying for specific Users will provide market participants the ability to provide information from the market data feeds to large numbers of Users without counting and paying for each individual User.

Non-Display Use Fees. The Exchange believes the proposed Non-Display Usage fees are not unfairly discriminatory because they would require subscribers for non-display use to pay fees depending on their use of the data, either for operation of a Trading Platform or not, but would not impose multiple fees to the extent a subscriber operates multiple Trading Platforms or has multiple different types of non-display use. As noted above, non-display data can be used by data recipients for a wide variety of profit-generating purposes as well as purposes that do not directly generate revenues but nonetheless substantially reduce the recipient's costs by automating certain functions. This segmented fee structure is not unfairly discriminatory because no subscriber of non-display data would be charged a fee for a category of use in which it did not actually engage.

The Exchange believes that it is not unreasonably discriminatory to charge a single fee for an operator of Trading Platforms that operates more than one Trading Platform because operators of Trading Platforms are many times viewed as a single competing venue or group, even if there a multiple liquidity pools operated by the same competitor. The Exchange again notes that certain competitors to the Exchange charge for non-display usage per Trading Platform,[76] in contrast to the Exchange's proposal. In turn, to the extent they subscribe to the market data feeds, these same competitors will benefit from the Exchange's pricing model to the

[76] See supra note 55.

extent they operate multiple Trading Platforms (as most do) by paying a single fee rather than paying for each Trading Platform that they operate that consumes the market data feeds.

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For all of the foregoing reasons, the Exchange believes that the proposed fees for the Exchange's market data feeds are not unfairly discriminatory.

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

In accordance with Section 6(b)(8) of the Act,[77] the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intra-Market Competition

The Exchange does not believe that the proposed fees place certain market participants at a relative disadvantage to other market participants because, as noted above, the proposed fees are associated with usage of the data feed by each market participant based on whether the market participant internally or externally distributes the Exchange data, which are still ultimately in the control of any particular Equity Member, and such fees do not impose a barrier to entry to smaller participants. Accordingly, the proposed fees do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the allocation of the proposed fees reflects the types of data consumed by various market participants and their usage thereof.

Inter-Market Competition

The Exchange does not believe the proposed fees place an undue burden on competition on other SROs that is not necessary or appropriate. In particular, market participants are not

[77] 15 U.S.C. 78f(b)(8).

forced to subscribe to either data feed, as described above. Additionally, other exchanges have similar market data fees with comparable rates in place for their participants.[78] The proposed fees are based on actual costs and are designed to enable the Exchange to recoup its applicable costs with the possibility of a reasonable profit on its investment as described in the Purpose and Statutory Basis sections. Competing exchanges are free to adopt comparable fee structures subject to the Commission's rule filing process. Allowing the Exchange, or any new market entrant, to waive fees for a period of time to allow it to become established encourages market entry and thereby ultimately promotes competition.

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,[79] and Rule 19b-4(f)(2)[80] 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.

78 See supra note 43.

79 15 U.S.C. 78s(b)(3)(A)(ii).

80 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 (https://www.sec.gov/rules/sro.shtml); or
- Send an email to rule-comments@sec.gov. Please include file number SR-PEARL-2024-15 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-2024-15. 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 (https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office

of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-PEARL-2024-15 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[81]

Sherry R. Haywood,

Assistant Secretary.

[81] 17 CFR 200.30-3(a)(12).