

1. Text of the Proposed Rule Change

(a) MIAX PEARL, LLC (“MIAX Pearl” or “Exchange”), pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)¹ and Rule 19b-4 thereunder,² proposes to amend the fee schedule (the “Fee Schedule”) applicable to MIAX Pearl Equities, an equities trading facility of the Exchange, to: (1) establish Liquidity Indicator Codes³ and associated fees and rebates for orders executed during the Early Trading Session⁴ and Late Trading Session⁵; (2) amend the definition for “Percent Time at NBBO”⁶, the explanatory text above the NBBO Setter Plus table, the NBBO Setter Additive Rebate⁷, the NBBO First Joiner Additive Rebate⁸, and certain footnotes to the NBBO Setter Plus Table to provide for order interactions that occur during the new Early Trading Session and Late Trading Session; (3) increase the fee for executions of orders in securities priced at or above \$1.00 per share that remove liquidity from the Exchange and update the corresponding Liquidity Indicator Codes; (4) remove the Step-Up Rebate⁹ provided for under the NBBO Setter Plus Program

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See, generally, Fee Schedule, Section 1)b).

⁴ See Securities Exchange Act Release No. 101358 (October 16, 2024), 89 FR 84406 (October 22, 2024) (SR-PEARL-2024-47) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt Both an Early and Late Trading Session on its Equity Trading Platform). The term “Early Trading Session” shall mean the time between 4:00 a.m. and 9:30 a.m. Eastern Time. See Exchange Rule 1901 (as amended by SR-PEARL-2024-47) (establishing a definition for “Early Trading Session”).

⁵ See id. The term “Late Trading Session” shall mean the time between 4:00 p.m. and 8:00 p.m. Eastern Time. See Exchange Rule 1901 (as amended by SR-PEARL-2024-47) (establishing a definition for “Late Trading Session”).

⁶ The term “Percent Time at NBBO” means the aggregate of the percentage of time during regular trading hours where a Member has a displayed order of at least one round lot at the national best bid (“NBB”) or national best offer (“NBO”). See the Definitions section of the Fee Schedule.

⁷ See Fee Schedule, Section 1)c).

⁸ Id.

⁹ Id. at footnote #4.

(referred to in this filing as the “NBBO Program”); and (5) amend certain fees and rebates for orders routed to away exchanges.

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1, and a copy of the applicable section of the Fee Schedule is attached hereto as Exhibit 5.

(b) Inapplicable.

(c) Inapplicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by the Chief Executive Officer of the Exchange or his designee pursuant to authority delegated by the Exchange Board of Directors on January 19, 2024. Exchange staff will advise the Board of Directors of any action taken pursuant to delegated authority. No other action by the Exchange is necessary for the filing of the proposed rule change.

Questions and comments on the proposed rule changes may be directed to Michael Slade, AVP and Associate Counsel, at (609) 955-0460.

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

a. Purpose

The Exchange proposes to amend the Fee Schedule to: (1) establish Liquidity Indicator Codes and associated fees and rebates¹⁰ for orders executed during the Early Trading Session and Late Trading Session; (2) amend the definition for “Percent Time at NBBO”¹¹, the

¹⁰ The Exchange notes that rebates are indicated by parentheses in the Fee Schedule. See the General Notes section of the Fee Schedule.

¹¹ See supra note 6.

explanatory text above the NBBO Setter Plus table, the NBBO Setter Additive Rebate, the NBBO First Joiner Additive Rebate, and certain footnotes to the NBBO Setter Plus Table to provide for order interactions that occur during the Early Trading Session and Late Trading Session; (3) increase the fee for executions of orders in securities priced at or above \$1.00 per share that remove liquidity from the Exchange and update the corresponding Liquidity Indicator Codes; (4) remove the Step-Up Rebate provided for under the NBBO Program; and (5) amend certain fees and rebates for orders routed to away exchanges.

The Exchange initially filed this proposal on January 31, 2025 (SR-PEARL-2025-03), which was withdrawn without being noticed. On February 13, 2025, the Exchange withdrew SR-PEARL-2025-03 and refiled this proposal.

Proposal to Establish Liquidity Indicator Codes for Orders Executed During the Early Trading Session and Late Trading Session

The Exchange proposes to amend Section 1)b) of the Fee Schedule to establish Liquidity Indicator Codes and associated fees and rebates for orders executed during the Early Trading Session and Late Trading Session. On October 3, 2024, the Exchange filed its proposed rule change with the Securities and Exchange Commission (“Commission”) to, among other things, expand its hours of operation by adopting both an Early Trading Session and Late Trading Session.¹² In that filing, the Exchange stated that the anticipated implementation date for the Early Trading Session and Late Trading Session would be in the first or second quarter of 2025 and that the Exchange would issue a trading alert publicly announcing the implementation date.¹³ On November 13, 2024, the Exchange issued an alert announcing the expected rollout dates for the Early Trading Session and Late Trading Session, with expected go-live date of February 20,

¹² See supra note 4.

¹³ Id.

2025.¹⁴ The Exchange now proposes to amend the Fee Schedule to establish Liquidity Indicator Codes and associated fees and rebates for orders executed during the Early Trading Session and Late Trading Session prior to the go-live date of February 20, 2025.

In particular, the Exchange proposes to establish the following Liquidity Indicator Codes with associated fees and rebates:¹⁵

- Liquidity Indicator Code EA, Early Trading Session, Adds Liquidity, Displayed Order (Tape A). Orders that yield liquidity indicator code EA will receive rebates of (\$0.0021) per share in securities priced at or above \$1.00 and 0.15% of the transaction's dollar value in securities priced below \$1.00.
- Liquidity Indicator Code FA, Late Trading Session, Adds Liquidity, Displayed Order (Tape A). Orders that yield liquidity indicator code FA will receive rebates of (\$0.0021) per share in securities priced at or above \$1.00 and 0.15% of the transaction's dollar value in securities priced below \$1.00.
- Liquidity Indicator Code EB, Early Trading Session, Adds Liquidity, Displayed Order (Tape B). Orders that yield liquidity indicator code EB will receive rebates of (\$0.0021) per share in securities priced at or above \$1.00 and 0.15% of the transaction's dollar value in securities priced below \$1.00.
- Liquidity Indicator Code FB, Late Trading Session, Adds Liquidity, Displayed Order (Tape B). Orders that yield liquidity indicator code FB will receive rebates of (\$0.0021) per share in securities priced at or above \$1.00 and 0.15% of the transaction's dollar value in securities priced below \$1.00.
- Liquidity Indicator Code EC, Early Trading Session, Adds Liquidity, Displayed Order (Tape C). Orders that yield liquidity indicator code EC will receive rebates of (\$0.0021) per share in securities priced at or above \$1.00 and 0.15% of the transaction's dollar value in securities priced below \$1.00.
- Liquidity Indicator Code FC, Late Trading Session, Adds Liquidity, Displayed Order

¹⁴ See Regulatory Alert, Technical Alert, Trading Alert for MIAX Pearl Equities, MIAX Pearl Equities – Rollout of Extended Hours Trading & Update to Mandatory FOI and MEO Upgrade Deadline, dated November 13, 2024, available at <https://www.miaxglobal.com/alert/2024/11/13/miax-pearl-equities-roll-out-extended-hours-trading-update-mandatory-foi>.

¹⁵ The rates described in the bullets include the Exchange's proposed change to increase the fee from \$0.00285 to \$0.00295 per share for executions of orders in securities priced at or above \$1.00 per share that remove liquidity from the Exchange across all Tapes, which is described in further detail below. In connection with this change, the Exchange proposes to amend the fee associated with certain Liquidity Indicator Codes in Sections 1)a) and 1)b) of the Fee Schedule, described below.

(Tape C). Orders that yield liquidity indicator code FC will receive rebates of (\$0.0021) per share in securities priced at or above \$1.00 and 0.15% of the transaction's dollar value in securities priced below \$1.00.

- Liquidity Indicator Code ER, Early Trading Session, Retail Order, Adds Liquidity, Displayed Order (All Tapes). Orders that yield liquidity indicator code ER will receive rebates of (\$0.0037) per share in securities priced at or above \$1.00 and 0.15% of the transaction's dollar value in securities priced below \$1.00.
- Liquidity Indicator Code FR, Late Trading Session, Retail Order, Adds Liquidity, Displayed Order (All Tapes). Orders that yield liquidity indicator code FR will receive rebates of (\$0.0037) per share in securities priced at or above \$1.00 and 0.15% of the transaction's dollar value in securities priced below \$1.00.
- Liquidity Indicator Code Ea, Early Trading Session, Adds Liquidity, Non-Displayed Order (Tape A). Orders that yield liquidity indicator code Ea will receive rebates of (\$0.00205) per share in securities priced at or above \$1.00 and 0.15% of the transaction's dollar value in securities priced below \$1.00.
- Liquidity Indicator Code Fa, Late Trading Session, Adds Liquidity, Non-Displayed Order (Tape A). Orders that yield liquidity indicator code Fa will receive rebates of (\$0.00205) per share in securities priced at or above \$1.00 and 0.15% of the transaction's dollar value in securities priced below \$1.00.
- Liquidity Indicator Code Eb, Early Trading Session, Adds Liquidity, Non-Displayed Order (Tape B). Orders that yield liquidity indicator code Eb will receive rebates of (\$0.00205) per share in securities priced at or above \$1.00 and 0.15% of the transaction's dollar value in securities priced below \$1.00.
- Liquidity Indicator Code Fb, Late Trading Session, Adds Liquidity, Non-Displayed Order (Tape B). Orders that yield liquidity indicator code Fb will receive rebates of (\$0.00205) per share in securities priced at or above \$1.00 and 0.15% of the transaction's dollar value in securities priced below \$1.00.
- Liquidity Indicator Code Ec, Early Trading Session, Adds Liquidity, Non-Displayed Order (Tape C). Orders that yield liquidity indicator code Ec will receive rebates of (\$0.00205) per share in securities priced at or above \$1.00 and 0.15% of the transaction's dollar value in securities priced below \$1.00.
- Liquidity Indicator Code Fc, Late Trading Session, Adds Liquidity, Non-Displayed Order (Tape C). Orders that yield liquidity indicator code Fc will receive rebates of (\$0.00205) per share in securities priced at or above \$1.00 and 0.15% of the transaction's dollar value in securities priced below \$1.00.
- Liquidity Indicator Code Ep, Early Trading Session, Adds Liquidity and Executes at the

Midpoint, Non-Displayed Midpoint Peg Order (All Tapes). Orders that yield liquidity indicator code Ep will receive rebates of (\$0.00205) per share in securities priced at or above \$1.00 and 0.15% of the transaction's dollar value in securities priced below \$1.00.

- Liquidity Indicator Code Fp, Late Trading Session, Adds Liquidity and Executes at the Midpoint, Non-Displayed Midpoint Peg Order (All Tapes). Orders that yield liquidity indicator code Fp will receive rebates of (\$0.00205) per share in securities priced at or above \$1.00 and 0.15% of the transaction's dollar value in securities priced below \$1.00.
- Liquidity Indicator Code Er, Early Trading Session, Retail Order, Adds Liquidity, Non-Displayed Order (All Tapes). Orders that yield liquidity indicator code Er will receive rebates of (\$0.00205) per share in securities priced at or above \$1.00 and 0.15% of the transaction's dollar value in securities priced below \$1.00.
- Liquidity Indicator Code Fr, Late Trading Session, Retail Order, Adds Liquidity, Non-Displayed Order (All Tapes). Orders that yield liquidity indicator code Fr will receive rebates of (\$0.00205) per share in securities priced at or above \$1.00 and 0.15% of the transaction's dollar value in securities priced below \$1.00.
- Liquidity Indicator Code eA, Early Trading Session, Removes Liquidity, Displayed Order (Tape A). Orders that yield liquidity indicator code eA will be charged fees of \$0.00295 per share in securities priced at or above \$1.00 and 0.20% of the transaction's dollar value in securities priced below \$1.00.
- Liquidity Indicator Code fA, Late Trading Session, Removes Liquidity, Displayed Order (Tape A). Orders that yield liquidity indicator code fA will be charged fees of \$0.00295 per share in securities priced at or above \$1.00 and 0.20% of the transaction's dollar value in securities priced below \$1.00.
- Liquidity Indicator Code eB, Early Trading Session, Removes Liquidity, Displayed Order (Tape B). Orders that yield liquidity indicator code eB will be charged fees of \$0.00295 per share in securities priced at or above \$1.00 and 0.20% of the transaction's dollar value in securities priced below \$1.00.
- Liquidity Indicator Code fB, Late Trading Session, Removes Liquidity, Displayed Order (Tape B). Orders that yield liquidity indicator code fB will be charged fees of \$0.00295 per share in securities priced at or above \$1.00 and 0.20% of the transaction's dollar value in securities priced below \$1.00.
- Liquidity Indicator Code eC, Early Trading Session, Removes Liquidity, Displayed Order (Tape C). Orders that yield liquidity indicator code eC will be charged fees of \$0.00295 per share in securities priced at or above \$1.00 and 0.20% of the transaction's dollar value in securities priced below \$1.00.
- Liquidity Indicator Code fC, Late Trading Session, Removes Liquidity, Displayed Order

(Tape C). Orders that yield liquidity indicator code fC will be charged fees of \$0.00295 per share in securities priced at or above \$1.00 and 0.20% of the transaction's dollar value in securities priced below \$1.00.

- Liquidity Indicator Code eR, Early Trading Session, Retail Order, Removes Liquidity, Displayed Order (All Tapes). Orders that yield liquidity indicator code eR will be charged fees of \$0.00295 per share in securities priced at or above \$1.00 and 0.20% of the transaction's dollar value in securities priced below \$1.00.
- Liquidity Indicator Code fR, Late Trading Session, Retail Order, Removes Liquidity, Displayed Order (All Tapes). Orders that yield liquidity indicator code fR will be charged fees of \$0.00295 per share in securities priced at or above \$1.00 and 0.20% of the transaction's dollar value in securities priced below \$1.00.
- Liquidity Indicator Code eT, Early Trading Session, Removes Retail Order Liquidity, Displayed Order (All Tapes). Orders that yield liquidity indicator code eT will be charged fees of \$0.00295 per share in securities priced at or above \$1.00 and 0.20% of the transaction's dollar value in securities priced below \$1.00.
- Liquidity Indicator Code fT, Late Trading Session, Removes Retail Order Liquidity, Displayed Order (All Tapes). Orders that yield liquidity indicator code fT will be charged fees of \$0.00295 per share in securities priced at or above \$1.00 and 0.20% of the transaction's dollar value in securities priced below \$1.00.
- Liquidity Indicator Code ea, Early Trading Session, Removes Liquidity, Non-Displayed Order (Tape A). Orders that yield liquidity indicator code ea will be charged fees of \$0.00295 per share in securities priced at or above \$1.00 and 0.20% of the transaction's dollar value in securities priced below \$1.00.
- Liquidity Indicator Code fa, Late Trading Session, Removes Liquidity, Non-Displayed Order (Tape A). Orders that yield liquidity indicator code fa will be charged fees of \$0.00295 per share in securities priced at or above \$1.00 and 0.20% of the transaction's dollar value in securities priced below \$1.00.
- Liquidity Indicator Code eb, Early Trading Session, Removes Liquidity, Non-Displayed Order (Tape B). Orders that yield liquidity indicator code eb will be charged fees of \$0.00295 per share in securities priced at or above \$1.00 and 0.20% of the transaction's dollar value in securities priced below \$1.00.
- Liquidity Indicator Code fb, Late Trading Session, Removes Liquidity, Non-Displayed Order (Tape B). Orders that yield liquidity indicator code fb will be charged fees of \$0.00295 per share in securities priced at or above \$1.00 and 0.20% of the transaction's dollar value in securities priced below \$1.00.
- Liquidity Indicator Code ec, Early Trading Session, Removes Liquidity, Non-Displayed

Order (Tape C). Orders that yield liquidity indicator code ec will be charged fees of \$0.00295 per share in securities priced at or above \$1.00 and 0.20% of the transaction's dollar value in securities priced below \$1.00.

- Liquidity Indicator Code fc, Late Trading Session, Removes Liquidity, Non-Displayed Order (Tape C). Orders that yield liquidity indicator code fc will be charged fees of \$0.00295 per share in securities priced at or above \$1.00 and 0.20% of the transaction's dollar value in securities priced below \$1.00.
- Liquidity Indicator Code ep, Early Trading Session, Removes Liquidity and Executes at the Midpoint, Non-Displayed Midpoint Peg Order (All Tapes). Orders that yield liquidity indicator code ep will be charged fees of \$0.00295 per share in securities priced at or above \$1.00 and 0.20% of the transaction's dollar value in securities priced below \$1.00.
- Liquidity Indicator Code fp, Late Trading Session, Removes Liquidity and Executes at the Midpoint, Non-Displayed Midpoint Peg Order (All Tapes). Orders that yield liquidity indicator code fp will be charged fees of \$0.00295 per share in securities priced at or above \$1.00 and 0.20% of the transaction's dollar value in securities priced below \$1.00.
- Liquidity Indicator Code er, Early Trading Session, Retail Order, Removes Liquidity, Non-Displayed Order (All Tapes). Orders that yield liquidity indicator code er will be charged fees of \$0.00295 per share in securities priced at or above \$1.00 and 0.20% of the transaction's dollar value in securities priced below \$1.00.
- Liquidity Indicator Code fr, Late Trading Session, Retail Order, Removes Liquidity, Non-Displayed Order (All Tapes). Orders that yield liquidity indicator code fr will be charged fees of \$0.00295 per share in securities priced at or above \$1.00 and 0.20% of the transaction's dollar value in securities priced below \$1.00.
- Liquidity Indicator Code et, Early Trading Session, Removes Retail Order Liquidity, Non-Displayed Order (All Tapes). Orders that yield liquidity indicator code et will be charged fees of \$0.00295 per share in securities priced at or above \$1.00 and 0.20% of the transaction's dollar value in securities priced below \$1.00.
- Liquidity Indicator Code ft, Late Trading Session, Removes Retail Order Liquidity, Non-Displayed Order (All Tapes). Orders that yield liquidity indicator code ft will be charged fees of \$0.00295 per share in securities priced at or above \$1.00 and 0.20% of the transaction's dollar value in securities priced below \$1.00.

The Exchange also proposes to amend Section 1)a) of the Fee Schedule, which provides the standard rates for adding or removing liquidity from the Exchange, routing orders away from the Exchange, and during the opening or re-opening process. In particular, the Exchange

proposes to add each of the above proposed new Liquidity Indicator Codes to the applicable columns in Section 1)a) of the Fee Schedule. With the proposed changes (the new Liquidity Indicator Codes are underlined in the Exhibit 5 and in the bullets below):

- The column titled “Adding Liquidity Displayed Order” will have the following Liquidity Indicator Codes: AA, EA, FA, AB, EB, FB, AC, EC, FC.
- The column titled “Adding Liquidity Displayed Retail Order” will have the following Liquidity Indicator Codes: AR, ER, FR.
- The column titled “Adding Liquidity Non-Displayed Order” will have the following Liquidity Indicator Codes: Aa, Ea, Fa, Ab, Eb, Fb, Ac, Ec, Fc, Ap, Ep, Fp, Ar, Er, Fr.
- The column titled “Removing Liquidity” will have the following Liquidity Indicator Codes: RA, eA, fA, Ra, ea, fa, RB, eB, fB, Rb, eb, fb, RC, eC, fC, Rc, ec, fc, Rp, ep, fp, RR, eR, fR, Rr, er, fr, RT, eT, fT, Rt, et, ft.

The purpose of establishing the proposed Liquidity Indicator Codes described above is to provide Equity Members¹⁶ increased clarity as to which fee or rebate may ultimately be applied to their executions during the Early Trading Session and Late Trading Session. The Exchange notes that at least one other exchange provides similar liquidity codes for the different trading sessions that are available at that exchange.¹⁷

Proposal to Amend the Definitions Section, the NBBO Setter Plus Table, and the NBBO Program to Account for Order Interactions During the Early Trading Session and Late Trading Session

Next, the Exchange proposes to amend the Definitions section of the Fee Schedule to amend the definition for “Percent Time at NBBO,” which, as described above, means the

¹⁶ The term “Equity Member” is a Member authorized by the Exchange to transact business on MIAX Pearl Equities. See Exchange Rule 1901.

¹⁷ See, e.g., Cboe EDGX Exchange, Inc. (“EDGX”) Equities Fee Schedule, Fee Codes and Associated Fees section, available at https://www.cboe.com/us/equities/membership/fee_schedule/edgx/?_gl=1*1f5f8qn*_up*MQ..*_ga*MzY2NTQyMTcuMTczNzY2OTUxMg..*_ga_5Q99WB9X71*MTczNzY2OTUxMC4xLjEuMTczNzY2OTU5My4wLjAuMA.

aggregate of the percentage of time during regular trading hours where an Equity Member has a displayed order of at least one round lot at the NBB or NBO. The Exchange applies an Equity Member's Percent Time at NBBO in its calculation for enhanced rebates that Equity Members may achieve pursuant to the NBBO Program. By way of background, the NBBO Program was implemented beginning September 1, 2023 and subsequently amended several times.¹⁸ In general, the NBBO Program provides enhanced rebates for Equity Members that add displayed liquidity ("Added Displayed Volume") in securities priced at or above \$1.00 per share in all Tapes depending on (i) the tier achieved using four volume-based calculation methods¹⁹, and (ii) participation at the NBBO on the Exchange in Market Quality Securities.²⁰ After qualifying into a particular tier based on volume, an Equity Member has the ability to qualify for an enhanced rebate level based on their performance in the NBBO Program, which requires the Equity Member to meet specific "Percent Time at NBBO" requirements in at least 200 securities in the entire list of MQ Securities, as noted in the NBBO Setter Plus Table in Section 1)c) of the Fee Schedule.

With the adoption of the Early Trading Session and Late Trading Session, the Exchange now proposes to amend the definition of "Percent Time at NBBO" to state that, for the avoidance

¹⁸ See, e.g., Securities Exchange Act Release Nos. 98472 (September 21, 2023), 88 FR 66533 (September 27, 2023) (SR-PEARL-2023-45); 99318 (January 11, 2024), 89 FR 3488 (January 18, 2024) (SR-PEARL-2023-73); and 99695 (March 8, 2024), 89 FR 18694 (March 14, 2024) (SR-PEARL-2024-11).

¹⁹ Each of the four different volume calculation methods are based on certain Added Displayed Volume as a percentage of Total Consolidated Volume ("TCV"). The term "TCV" means total consolidated volume calculated as the volume in shares reported by all exchanges and reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply. See the Definitions section of the Fee Schedule.

²⁰ The term "Market Quality Securities" or "MQ Securities" shall mean a list of securities designated as such, that are used for the purposes of qualifying for the rebates described in Level B and Level C of the Market Quality Tier columns in the NBBO Setter Plus Program. The universe of these securities will be determined by the Exchange and published on the Exchange's website. See the Definitions section of the Fee Schedule.

of doubt, only orders that are at the NBB or NBO during the Regular Trading Session²¹ count towards the Percent Time at NBBO calculation. Related to this change, the Exchange proposes to make a conforming change to footnote #2 in the NBBO Setter Plus Table to specify that only orders that are at the NBB or NBO during the Regular Trading Session count towards the Percent Time at NBBO calculation.

Next, the Exchange proposes to amend the paragraph above the NBBO Setter Plus Table in Section 1)c) of the Fee Schedule to clarify that, with the onset of the Early Trading Session and Late Trading Session, orders in the Added Displayed Volume category/tier in securities priced at or above \$1.00 per share that execute during all trading sessions will count towards the different volume calculation methods in the NBBO Program. The Exchange also proposes to amend the last sentence in that paragraph to add certain Liquidity Indicator Codes that apply to orders executed during the Early Trading Session and Late Trading Session which will also receive the achieved rebate. With the proposed changes, the explanatory paragraph above the NBBO Setter Plus Table will read as follows:

Equity Members will receive the rebates described in the NBBO Setter Plus table for executions of orders in securities during the Early, Regular, and Late Trading Sessions priced at or above \$1.00 per share that add displayed liquidity to the Exchange across all Tapes, depending on (i) the tier achieved using four volume-based calculation methods, and (ii) participation at the NBBO on the Exchange in MQ Securities. The rebates provided for by the below table are applicable to the following Liquidity Indicator Codes: AA, EA, FA, AB, EB, FB, AC, EC, and FC.

Related to this change, the Exchange proposes to amend footnote #1 to the NBBO Setter Plus Table to specify that volume executed during the Early, Regular and Late Trading Sessions will be included in each volume calculation method.

²¹ The term “Regular Trading Session” shall mean the time between the completion of the Opening Process as defined in Exchange Rule 2615 and 4:00 p.m. Eastern Time. See Exchange Rule 1901.

Next, the Exchange proposes to amend the footnotes for the NBBO Setter Additive Rebate and NBBO First Joiner Additive Rebate in the NBBO Setter Plus Table to specify that these enhanced rebates will only apply during the Regular Trading Session. For background, the NBBO Program provides the following additional incentives: (1) an NBBO Setter Additive Rebate²² applied to executions of orders in securities priced at or above \$1.00 per share that set the NBB or NBO upon entry; and (2) an NBBO First Joiner Additive Rebate²³ applied to executions of orders in securities priced at or above \$1.00 per share that bring MIAX Pearl Equities to the established NBB or NBO. In particular, the Exchange proposes to add the following sentence at the end of each rebate: “This rebate will be applied only to orders executed during the Regular Trading Session.”

The purpose of all of these changes is to specify how orders entered and executed during the Early Trading Session and Late Trading Session will, or will not, count towards certain volume and NBBO requirements pursuant to the NBBO Program and the enhanced rebates provided thereunder.

Proposal to Increase the Standard Fee for Removing Liquidity

Next, the Exchange proposes to amend Sections 1)a) and 1)b) of the Fee Schedule to amend the fee for executions of orders in securities priced at or above \$1.00 per share that remove liquidity from the Exchange. Currently, the Exchange assesses a standard rate of \$0.00285 per share for executions of orders in securities priced at or above \$1.00 per share that

²² The Exchange does not propose to amend the NBBO Setter Additive Rebate, which is an additive rebate of (\$0.0004) per share for executions of orders in securities priced at or above \$1.00 per share that set the NBB or NBO on MIAX Pearl Equities with a minimum size of a round lot. See Fee Schedule, Section 1)c).

²³ The Exchange does not propose to amend the NBBO First Joiner Additive Rebate, which is an additive rebate of (\$0.0002) per share for executions of orders in securities priced at or above \$1.00 per share that bring MIAX Pearl Equities to the established NBB or NBO with a minimum size of a round lot. See Fee Schedule, Section 1)c).

remove liquidity from the Exchange. The Exchange now proposes to amend the Standard Rates table in Section 1)a) of the Fee Schedule to amend the fee in the “Removing Liquidity” column to increase the standard rate from \$0.00285 to \$0.00295 per share for executions of orders in securities priced at or above \$1.00 per share that remove liquidity from the Exchange. The Exchange also proposes to amend (or establish, in the case of Liquidity Indicator Codes for Early and Late Trading Sessions, as described above) the fee applicable to the corresponding Liquidity Indicator Codes in Section 1)b) of the Fee Schedule for this proposed change to increase the standard rate from \$0.00285 to \$0.00295 per share for executions of orders in securities priced at or above \$1.00 per share that remove liquidity from the Exchange. Accordingly, with the proposed changes, the following Liquidity Indicator Codes in Section 1)b) of the Fee Schedule will show a fee of \$0.00295 per share (the new Liquidity Indicator Codes are underlined in the Exhibit 5 and in the following list): RA, eA, fA, Ra, ea, fa, RB, eB, fB, Rb, eb, fb, RC, eC, fC, Rc, ec, fc, Rp, ep, fp, RR, eR, fR, Rr, er, fr, RT, eT, fT, Rt, et, ft.

The purpose of these proposed changes is for business and competitive reasons. The Exchange notes that despite the changes proposed herein, the Exchange’s proposed standard fee of \$0.00295 per share for executions of all orders in securities priced at or above \$1.00 per share that remove liquidity from the Exchange remains competitive with the standard fee to remove liquidity in securities priced at or above \$1.00 per share charged by other equity exchanges.²⁴

Proposal to Amend the NBBO Setter Plus Table to Remove the Step-Up Rebate

The Exchange proposes to amend the NBBO Setter Plus Table in Section 1)c) of the Fee

²⁴ See e.g., MEMX LLC (“MEMX”) Equities Fee Schedule, Transaction Fees, Fee Code “R” (providing standard remove volume fee of \$0.0030 per share for executions of orders in securities priced at or above \$1.00 per share); and Cboe BZX Exchange, Inc. (“BZX”), Equities Fee Schedule, Standard Rates (providing standard remove volume fee of \$0.0030 per share for executions of orders in securities priced at or above \$1.00 per share).

Schedule to remove the Step-Up Rebate in footnote #4.²⁵ The Exchange initially established the Step-Up Rebate for effectiveness beginning April 1, 2024 and subsequently amended the Step-Up Rebate calculation methods, rebate amount, and sunset period through additional rule filings.²⁶ Currently, Equity Members qualify for the Step-Up Rebate of (\$0.0001) per share by satisfying the following requirements: (1) minimum displayed ADAV as a percentage of TCV of 0.35% and (2) an increase in the percentage of displayed ADAV as a percentage of TCV of at least 0.05% over the baseline month of July 2024.²⁷ Alternatively, Equity Members qualify for the Step-Up Rebate of (\$0.0001) per share by satisfying the following requirements: (1) minimum displayed ADAV as a percentage of TCV of 0.35% (excluding sub-dollar volume); and (2) increase in the percentage of displayed ADAV as percentage of TCV of at least 0.05% over the baseline month of July 2024 (excluding sub-dollar volume).²⁸ The Step-Up Rebate is currently set to expire on January 31, 2025.

The Exchange now proposes to let the Step-Up Rebate expire on January 31, 2025 and remove the text for the Step-Up Rebate from the Fee Schedule pursuant to this rule filing.²⁹ The purpose of this change is to remove text for an enhanced rebate that will no longer apply following its automatic expiration on January 31, 2025, which will provide clarity in the Fee

²⁵ The Exchange proposes to insert “Reserved” for footnote #4 to keep the remaining footnotes numbered consistently.

²⁶ See Securities Exchange Act Release Nos. 99982 (April 17, 2024), 89 FR 30408 (April 23, 2024) (SR-PEARL-2024-18); 100491 (July 10, 2024), 89 FR 57974 (July 16, 2024) (SR-PEARL-2024-28); and 101100 (September 19, 2024), 89 FR 78359 (September 25, 2024) (SR-PEARL-2024-41).

²⁷ The Exchange used a baseline ADAV of 0.00% of TCV for firms that become Equity Members of the Exchange after July 2024 for the purpose of the Step-Up Rebate calculation.

²⁸ See Fee Schedule, Section 1)c), footnote #4.

²⁹ The Exchange noted in its prior filing to extend the sunset date for the Step-Up Rebate that, at the end of the sunset period, the Step-Up Rebate would no longer apply unless the Exchange filed another 19b-4 Rule Filing with the Commission to amend the criteria terms or update the baseline month to a more recent month. See Securities Exchange Act Release No. 89 FR 78359 (September 25, 2024) (SR-PEARL-2024-41).

Schedule for Equity Members regarding which rebates they can achieve.

Proposal to Amend Certain Fees and Rebates for Orders Routed to Away Exchanges

The Exchange proposes to amend certain fees and rebates associated with the Liquidity Indicator Codes in Section 1)b) of the Fee Schedule for orders routed to away exchanges. The Exchange previously adopted the following liquidity indicator codes (among others) and associated fees and rebates for certain orders routed to away exchanges³⁰:

- Liquidity indicator code XC, Routed to NYSE, Opening/Re-Opening Auction. Orders that yield liquidity indicator code XC are charged a fee \$0.00005 per share in securities priced at or above \$1.00 and 0.00% of the transaction's dollar value in securities priced below \$1.00.
- Liquidity indicator code XD, Routed to NYSE, Closing Auction. Orders that yield liquidity indicator code XD are charged a fee of \$0.00085 per share in securities priced at or above \$1.00 and 0.30% of the transaction's dollar value in securities priced below \$1.00.
- Liquidity indicator code XE, Routed to NYSE, Adds Displayed Liquidity. Orders that yield liquidity indicator code XE are rebated in the amount (\$0.0015) per share in securities priced at or above \$1.00 and charged a fee of 0.01% of the transaction's dollar value in securities priced below \$1.00.
- Liquidity indicator code XF, Routed to NYSE Arca, Opening/Re-Opening Auction. Orders that yield liquidity indicator code XF are charged a fee of \$0.00005 per share in securities priced at or above \$1.00 and 0.00% of the transaction's dollar value in securities priced below \$1.00.
- Liquidity indicator code XH, Routed to NYSE Arca, Adds Displayed Liquidity. Orders that yield liquidity indicator code XH are rebated in the amount (\$0.0015) per share in securities priced at or above \$1.00 and charged a fee of 0.01% of the transaction's dollar value in securities priced below \$1.00.
- Liquidity indicator code XI, Routed to NYSE American, Opening/Re-Opening Auction. Orders that yield liquidity indicator code XI are charged a fee of \$0.00005 per share in securities priced at or above \$1.00 and 0.00% of the transaction's dollar value in securities priced below \$1.00.

³⁰ See, e.g., Securities Exchange Act Release Nos. 95210 (July 7, 2022), 87 FR 41750 (July 13, 2022) (SR-PEARL-2022-26) and 97519 (May 17, 2023), 88 FR 33181 (May 23, 2023) (SR-PEARL-2023-22).

- Liquidity indicator code XK, Routed to NYSE American, Adds Displayed Liquidity. Orders that yield liquidity indicator code XK are rebated in the amount (\$0.001) per share in securities priced at or above \$1.00 and charged a fee of 0.01% of the transaction's dollar value in securities priced below \$1.00.
- Liquidity indicator code XL, Routed to Cboe BZX, Opening/Re-Opening Auction. Orders that yield liquidity indicator code XL are charged a fee of \$0.00005 per share in securities priced at or above \$1.00 and 0.00% of the transaction's dollar value in securities priced below \$1.00.
- Liquidity indicator code XM, Routed to Cboe BZX, Closing Auction. Orders that yield liquidity indicator code XM are charged a fee of \$0.00105 per share in securities priced at or above \$1.00 and 0.105% of the transaction's dollar value in securities priced below \$1.00.
- Liquidity indicator code XN, Routed to Cboe BZX, Adds Displayed Liquidity. Orders that yield liquidity indicator code XN are rebated in the amount (\$0.0015) per share in securities priced at or above \$1.00 and charged a fee of 0.01% of the transaction's dollar value in securities priced below \$1.00.
- Liquidity indicator code XO, Routed to Nasdaq, Opening/Re-Opening Auction. Orders that yield liquidity indicator code XO are charged a fee of \$0.00005 per share in securities priced at or above \$1.00 and 0.00% of the transaction's dollar value in securities priced below \$1.00.
- Liquidity indicator code XQ, Routed to Nasdaq, Adds Displayed Liquidity. Orders that yield liquidity indicator code XQ are rebated in the amount (\$0.0015) per share in securities priced at or above \$1.00 and charged a fee of 0.01% of the transaction's dollar value in securities priced below \$1.00.

Specifically, the Exchange proposes to amend the fees and rebates for Liquidity Indicator Codes XC, XD, XE, XF, XH, XI, XK, XL, XM, XN, XO, and XQ. With the proposed changes, for securities priced at or above \$1.00 per share: the fee for Liquidity Indicator Code XC will be increased from \$0.00005 to \$0.00105 per share; the fee for Liquidity Indicator Code XD will be reduced from \$0.00085 to \$0.00075 per share; the rebate for Liquidity Indicator Code XE will be increased from (\$0.0015) to (\$0.00215) per share; the fee for Liquidity Indicator Code XF will be increased from \$0.00005 to \$0.00155 per share; the rebate for Liquidity Indicator Code XH will be increased from (\$0.0015) to (\$0.00315) per share; the fee for Liquidity Indicator Code XI

will be increased from \$0.00005 to \$0.00055 per share; the rebate for Liquidity Indicator Code XK will be increased from (\$0.001) to (\$0.00155) per share; the fee for Liquidity Indicator Code XL will be increased from \$0.00005 to \$0.00135 per share; the fee for Liquidity Indicator Code XM will be increased from \$0.00105 to \$0.00115 per share; the rebate for Liquidity Indicator Code XN will be increased from (\$0.0015) to (\$0.00315) per share; the fee for Liquidity Indicator Code XO will be increased from \$0.00005 to \$0.00155 per share; and the rebate for Liquidity Indicator Code XQ will be increased from (\$0.0015) to (\$0.00325) per share.

With the proposed changes, for securities priced below \$1.00 per share: the fee for Liquidity Indicator Code XC will be increased from 0.00% to 0.30% of the transaction's dollar value; the fee for Liquidity Indicator Code XE will be reduced from 0.01% to 0.005% of the transaction's dollar value; the fee for Liquidity Indicator Code XF will be increased from 0.00% to 0.105% of the transaction's dollar value; the fee for Liquidity Indicator Code XH will be reduced from 0.01% to 0.005% of the transaction's dollar value; the fee for Liquidity Indicator Code XI will be increased from 0.00% to 0.055% of the transaction's dollar value; the fee for Liquidity Indicator Code XK will be reduced from 0.01% to 0.005% of the transaction's dollar value; the rebate for Liquidity Indicator Code XN will be reduced from 0.01% to 0.005% of the transaction's dollar value; the fee for Liquidity Indicator Code XO will be increased from 0.00% to 0.30% of the transaction's dollar value; and the rebate for Liquidity Indicator Code XQ will be reduced from 0.01% to 0.005% of the transaction's dollar value.

The purpose of these proposed changes is for business and competitive reasons. The Exchange notes that other equity exchanges that offer similar routing functionality charge similar fees (or provide similar rebates) as those proposed herein, and the Exchange proposes to recoup costs that are incurred when routing orders to away exchanges on behalf of Equity Members.

The proposed fee changes are immediately effective.

b. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act³¹ in general, and furthers the objectives of Section 6(b)(4) of the Act³² in particular, in that it is an equitable allocation of reasonable fees and other charges among its Equity Members and issuers and other persons using its facilities. The Exchange also believes that the proposal is consistent with the objectives of Section 6(b)(5)³³ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, and 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 and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and, particularly, is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange operates in a highly fragmented and competitive market in which market participants can readily direct their order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of seventeen registered equities exchanges, and there are a number of alternative trading systems and other off-exchange venues, to which market participants may direct their order flow. For the month of December 2024, based on publicly available information, no single

³¹ 15 U.S.C. 78f(b).

³² 15 U.S.C. 78f(b)(4).

³³ 15 U.S.C. 78f(b)(5).

registered equities exchange had more than approximately 14% of the total market share of executed volume of equities trading.³⁴ Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. For the month of December 2024, the Exchange represented 1.24% of the total market share of executed volume of equities trading.³⁵ The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and also recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”³⁶

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to new or different pricing structures being introduced into the market. Accordingly, competitive forces constrain the Exchange’s transaction fees and rebates, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. The Exchange believes the proposal reflects a reasonable and competitive pricing structure designed to continue to incentivize market participants to direct their order flow to the Exchange, which the Exchange believes would continue to enhance liquidity and market quality to the benefit of all Equity

³⁴ See the “Market Share” section of the Exchange’s website, available at <https://www.miaxglobal.com/> (last visited January 24, 2025).

³⁵ Id.

³⁶ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37499 (June 29, 2005).

Members and market participants.

Proposal to Establish Liquidity Indicator Codes for Orders Executed During Early Trading Session and Late Trading Session

The Exchange believes its proposal to establish Liquidity Indicator Codes and associated fees and rebates for orders executed during the Early Trading Session and Late Trading Session is reasonable, equitably allocated and not unfairly discriminatory because the new Liquidity Indicator Codes will provide Equity Members with increased clarity as to which fee or rebate may ultimately be applied to orders executed during the Early Trading Session and Late Trading Session. Additionally, the Exchange believes its proposal to establish Liquidity Indicator Codes and associated fees and rebates for orders executed during the Early Trading Session and Late Trading Session is reasonable, equitable and not unfairly discriminatory because the proposed fees and rebates will apply equally to all Equity Members of the Exchange for their orders executed during the Early Trading Session and Late Trading Session. The use of Liquidity Indicator Codes is not unique to the Exchange and are currently utilized and described in the fee schedule of at least one other equities exchange that has extended trading sessions.³⁷ The Exchange believes its proposal to establish Liquidity Indicator Codes and associated fees and rebates for orders executed during the Early Trading Session and Late Trading Session reflects a reasonable, equitable and not unfairly discriminatory pricing structure because the proposed rates correspond to the fee or rebate currently in place at the Exchange for similar transactions executed during the Regular Trading Session.

For example, the Exchange currently provides a base rebate of (\$0.0021) per share for executions of orders in securities priced at or above \$1.00 per share that add displayed liquidity

³⁷ See supra note 17.

to the Exchange across all Tapes during the Regular Trading Session (i.e., Liquidity Indicator Codes AA, AB, and AC). Now, the Exchange proposes to provide the same base rebate of (\$0.0021) per share for executions of orders in securities priced at or above \$1.00 per share that add displayed liquidity to the Exchange across all Tapes in the Early Trading Session and Late Trading Session (i.e., proposed Liquidity Indicator Codes EA, FA, EB, FB, EC, and FC). As another example, the Exchange proposes to charge a base fee of \$0.00295 per share for executions of orders in securities priced at or above \$1.00 per share that remove liquidity from the Exchange across all Tapes during the Regular Trading Session (i.e., Liquidity Indicator Codes RA, Ra, RB, Rb, RC, Rc, Rp, RR, Rr, RT, and Rt). Now, the Exchange proposes to charge the same base fee of \$0.00295 per share for executions of orders in securities priced at or above \$1.00 per share that remove liquidity from the Exchange across all Tapes during the Early Trading Session and Late Trading Session (i.e., proposed Liquidity Indicator Codes eA, fA, ea, fa, eB, fB, eb, fb, eC, fC, ec, fc, ep, fp, eR, fR, er, fr, eT, fT, et, and ft).

As such, the Exchange believes the proposed Liquidity Indicator Codes and associated fees and rebates for orders executed during the Early Trading Session and Late Trading Session are designed to incentivize market participants to direct their order flow to the Exchange during the Early Trading Session and Late Trading Session, which the Exchange believes would enhance liquidity and market quality during the Early Trading Session and Late Trading Session. Increasing liquidity during the Early and Late Trading Sessions will raise investors' confidence in the fairness of the markets and their transactions, particularly due to the lower volume of trading occurring prior to the Regular Trading Session.

Proposal to Amend the Definitions Section, the NBBO Setter Plus Table, and the NBBO Program to Account for Order Interactions During the Early Trading Session and Late Trading Session

The Exchange believes its proposal to amend the Definitions section and certain text and rebates in the NBBO Program is reasonable, equitably allocated and not unfairly discriminatory because it is meant to be illustrative and provide Equity Members increased clarity as to which orders entered and executed during the Early Trading Session and Late Trading Session count towards certain volume and NBBO requirements pursuant to the NBBO Program and the enhanced rebates provided thereunder. The Exchange believes the proposed changes to (i) specify that only orders that are at the NBB or NBO during the Regular Trading Session count towards the Percent Time at NBBO calculation and (ii) that the NBBO Setter Additive Rebate and NBBO First Joiner Additive Rebate will be applied only to orders executed during the Regular Trading Session are reasonable, equitable and not unfairly discriminatory.

The Exchange will be able to begin collecting data regarding liquidity during the Early Trading Session and Late Trading Session on February 20, 2025. The Exchange believes that the Early Trading Session and Late Trading Session may have less trading activity at the onset of those extended trading hours, with less representative quoting from market participants. The Exchange believes that excluding quotes from the calculation of the Percent Time at NBBO calculation, at least initially, will benefit all market participants by only counting quotes submitted during Regular Trading Hours, when there is likely to be increased trading activity and liquidity as compared to the Early Trading Session and Late Trading Session. This proposal is reasonable, equitable and not unfairly discriminatory because it will benefit market participants by excluding those trading sessions where there may be less quoting at the NBB or NBO, thereby potentially impacting market participants' Percent Time at NBBO, leading to a lower tier and associated reduced rebate pursuant to the NBBO Setter Plus Table. In so doing, the Exchange believes it is providing Equity Members the most favorable opportunity in order to

receive enhanced rebates under the NBBO Setter Plus Table. Once the Exchange begins to offer trading during the Early Trading Session and Late Trading Session, the Exchange will monitor market participant quoting to determine whether including quotes at the NBB or NBO during the Early and Late Trading Sessions would be beneficial for market participants to be able to achieve enhanced rebates pursuant to the NBBO Setter Plus Table and may adjust such calculation and rules accordingly.

The Exchange believes it is reasonable, equitable and not unfairly discriminatory to apply the NBBO Setter Additive Rebate and NBBO First Joiner Additive Rebate only to orders executed during the Regular Trading Session because the Exchange cannot predict with certainty what liquidity during the Early and Late Trading Sessions will look like, at least initially. As mentioned above, the Exchange will only be able to begin collecting data regarding liquidity during the Early Trading Session and Late Trading Session on February 20, 2025. The Exchange believes that the Early Trading Session and Late Trading Session may have less trading activity at the onset of those extended trading hours, with less representative quoting from market participants. In these circumstances, the Exchange believes it is appropriate to initially apply the NBBO Setter Additive Rebate and NBBO First Joiner Additive Rebate only to orders executed during the Regular Trading Session while the Exchange monitors liquidity and trading activity during the extended trading hours. Accordingly, the Exchange believes it is reasonable and not unfairly discriminatory to not apply the additive rebates during the Early and Late Trading Sessions.

The Exchange also believes these proposed changes are equitably allocated because the changes will apply equally to all market participants during Early Trading Session and Late Trading Session. The Exchange also notes that, while the additive rebates described above will

not be applicable during the Early and Late Trading Sessions, the Exchange will aggregate the Added Displayed Volume executed by each Equity Member during the Early Trading Session and Late Trading Session with their similar volume executed during the Regular Trading Session. This will provide additional opportunities for Equity Members to achieve higher tiers pursuant to the NBBO Program, which corresponds to higher rebates that Equity Members may receive based on increasing volume thresholds.

Proposal to Increase the Standard Fee for Removing Liquidity

The proposal to increase the fee for executions of orders in securities priced at or above \$1.00 per share that remove liquidity from the Exchange is reasonable, equitably allocated, and not unfairly discriminatory because, even with the proposed increase, the Exchange believes assessing a standard fee of \$0.00295 per share to remove liquidity will not discourage order flow. The Exchange notes that despite the changes proposed herein, the Exchange's proposed standard fee of \$0.00295 per share for executions of all orders in securities priced at or above \$1.00 per share that remove liquidity from the Exchange remains competitive with the standard fee to remove liquidity in securities priced at or above \$1.00 per share charged by other equity exchanges.³⁸ The Exchange believes that continuing to assess a fee that is competitive with other exchanges' fees to remove liquidity in securities priced at or above \$1.00 per share will continue to encourage Equity Members to maintain their order flow directed to the Exchange. In turn, this should continue to contribute to a deep and liquid market to the benefit of all market participants and allow the Exchange to maintain its attractiveness as a trading venue. The Exchange further believes the proposed increased fee for orders that remove liquidity is fair, equitable and not unfairly discriminatory because the standard fee will apply to all Equity Members that remove

³⁸ See supra note 24.

liquidity in securities priced at or above \$1.00 per share.

Proposal to Amend the NBBO Setter Plus Table to Remove the Step-Up Rebate

The Exchange believes its proposal to remove the Step-Up Rebate from the NBBO Program and delete the associated text is reasonable, equitably allocated, and not unfairly discriminatory because this change is designed to remove text for an enhanced rebate that will no longer apply following its expiration on January 31, 2025. This change will provide clarity in the Fee Schedule for Equity Members regarding which rebates they can achieve.

Proposal to Amend Certain Fees and Rebates for Orders Routed to Away Exchanges

The Exchange believes its proposal to amend certain fees and rebates for orders routed to away exchanges is reasonable, equitably allocated, and not unfairly discriminatory because competing exchanges that offer similar functionality charge similar fees (or provides similar rebates) as those proposed herein, and the Exchange proposes to recoup costs that are incurred when routing orders to away exchanges on behalf of Equity Members.

Regarding the rates for securities priced at or above \$1.00 per share, the proposed fee of \$0.00105 for Liquidity Indicator Code XC, Routed to NYSE, Opening/Re-Opening Auction, is comparable to the fee charged by NYSE Arca, Inc. (“NYSE Arca”) of \$0.001 to route orders to NYSE Auctions.³⁹ Similarly, the proposed fee of \$0.00075 for Liquidity Indicator Code XD, Routed to NYSE, Closing Auction, is lower than the fee charged by NYSE American LLC (“NYSE American”) of \$0.0016 to route orders to all away market auctions (which would

³⁹ See NYSE Arca Equities Exchange Fee Schedule, Section V., Standard Rates – Routing, available at https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf (last visited January 27, 2025).

include NYSE Auctions).⁴⁰ The proposed credit of (\$0.00215) for Liquidity Indicator Code XE, Routed to NYSE, Adds Displayed Liquidity, is higher than the credit of \$0.0015 provided by Cboe BZX Exchange, Inc. (“Cboe BZX”) for fee code “F”, routed to NYSE, adds liquidity.⁴¹ The proposed fee of \$0.00155 for Liquidity Indicator Code XF, Routed to NYSE Arca, Opening/Re-Opening Auction, is comparable to the fee charged by Cboe BZX of \$0.0015 for routing orders to a listing market’s opening or re-opening cross.⁴² The proposed credit of (\$0.00315) for Liquidity Indicator Code XH, Routed to NYSE Arca, Adds Displayed Liquidity, is higher than the credit of \$0.0022 provided by Cboe BZX for fee code “10” routed to NYSE Arca, adds liquidity (Tape B).⁴³ The proposed fee of \$0.00055 for Liquidity Indicator Code XI, Routed to NYSE American, Opening/Re-Opening Auction, is comparable to the fee charged by NYSE Arca of \$0.0005 to route orders to NYSE American Auctions.⁴⁴ The proposed credit of (\$0.00155) for Liquidity Indicator Code XK, Routed to NYSE American, Adds Displayed Liquidity, is comparable to the base credit of \$0.0016 provided by NYSE American for Adding Displayed Liquidity.⁴⁵ The proposed fee of \$0.00135 for Liquidity Indicator Code XL, Routed to Cboe BZX, Opening/Re-Opening Auction, is lower than the fee charged by NYSE Arca of \$0.003 for routing orders to Cboe BZX auctions.⁴⁶ Similarly, the proposed fee of \$0.00115 for

⁴⁰ See NYSE American Equities Price List, Section III. Fees for Routing for all ETP Holders, available at https://www.nyse.com/publicdocs/nyse/markets/nyse-american/NYSE_America_Equities_Price_List.pdf (last visited February 11, 2025).

⁴¹ See BZX Equities Fee Schedule, Fee Codes and Associated Fee, Fee Code “F”, available at https://www.cboe.com/us/equities/membership/fee_schedule/bzx/?_gl=1*_vhk2v3*_up*MQ..*_ga*MTEyNzA0MjIwMS4xNzM4MDAyMDky*_ga_5Q99WB9X71*MTczODAwNTI0Mi4yLjEuMTczODAwNTI4My4wLjAuMA (last visited January 27, 2025).

⁴² See id. at Fee Code “O”.

⁴³ See id. at Fee Code “10”.

⁴⁴ See supra note 39.

⁴⁵ See supra note 40, at Section I.A.1.a.

⁴⁶ See supra note 39.

Liquidity Indicator Code XM, Routed to Cboe BZX, Closing Auction, is less than the fee charged by NYSE Arca of \$0.003 to route orders to Cboe BZX auctions.⁴⁷ The proposed credit of (\$0.00315) for Liquidity Indicator Code XN, Routed to Cboe BZX, Adds Displayed Liquidity, is higher than the credit of \$0.0016 provided by Cboe EDGX Exchange, Inc. (“Cboe EDGX”) for fee code “RZ,” routed to Cboe BZX, adds liquidity.⁴⁸ The proposed fee of \$0.00155 for Liquidity Indicator Code XO, Routed to Nasdaq, Opening/Re-Opening Auction, is less than the fee charged by NYSE Arca of \$0.003 for routing orders to Nasdaq auctions.⁴⁹ The proposed credit of (\$0.00325) for Liquidity Indicator Code XQ, Routed to Nasdaq, Adds Displayed Liquidity, is higher than the credit provided by Cboe BZX of \$0.0015 for fee code “A,” routed to Nasdaq, adds liquidity.⁵⁰

Regarding the proposed rates for securities priced below \$1.00, the Exchange believes its rates are reasonable because, as indicated above, in order to operate in the highly competitive equities markets, the Exchange, and its competing exchanges, seek to offer similar pricing structures, including assessing comparable standard fees and rebates. The Exchange currently charges a fee of 0.30% of the total dollar value of the transaction for executions in securities priced below \$1.00 that occur on away exchanges under liquidity indicator code “X.” Other competing exchanges charge similar fees, such as NYSE American, that assesses a fee of 0.30% of the total dollar value of the transaction for executions in securities priced below \$1.00 occurring in an away market auction.⁵¹ The Exchange notes that none of its proposed fees for

⁴⁷ See supra note 39.

⁴⁸ See supra note 17, Fee Code “RZ”.

⁴⁹ See supra note 39.

⁵⁰ See supra note 41.

⁵¹ See supra note 40.

executions in securities priced below \$1.00 exceed 0.30% and are thus reasonably priced and competitive with other competing equity exchanges.

For the reasons discussed above, the Exchange submits that the proposal satisfies the requirements of Sections 6(b)(4) and 6(b)(5) of the Act in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Equity Members and other persons using its facilities and is not designed to unfairly discriminate between customers, issuers, brokers, or dealers.

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

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

Intramarket Competition

The Exchange believes its proposal to establish Liquidity Indicator Codes and associated fees and rebates for orders executed during the Early Trading Session and Late Trading Session will not impose any burden on intramarket competition because the fees and rebates applicable to the new Liquidity Indicator Codes correspond to the fees or rebates currently in place at the Exchange for similar transactions executed during the Regular Trading Session. As such, the Exchange believes the proposed Liquidity Indicator Codes and associated fees and rebates for orders executed during the Early Trading Session and Late Trading Session are designed to incentivize market participants to direct their order flow to the Exchange during the Early Trading Session and Late Trading Session, which the Exchange believes would enhance liquidity and benefit competition. The proposed Liquidity Indicator Codes and associated fees and rebates for orders executed during the Early Trading Session and Late Trading Session will apply equally to all Equity Members of the Exchange for their orders executed during the Early

Trading Session and Late Trading Session. Further, the use of Liquidity Indicator Codes is not unique to the Exchange and are currently utilized and described in the fee schedules of at least one other equities exchange that has extended trading sessions.⁵²

The Exchange believes its proposal to amend the Definitions section and certain text and rebates in the NBBO Program will not impose any burden on intramarket competition because these changes are meant to provide Equity Members increased clarity as to which orders entered and executed during the Early Trading Session and Late Trading Session count towards certain volume and NBBO requirements pursuant to the NBBO Program and the enhanced rebates provided thereunder. The Exchange believes that excluding quotes from the calculation of the Percent Time at NBBO calculation, at least initially, will not impose any burden on intramarket competition as there is likely increased trading activity and liquidity during the Regular Trading Session as compared to the Early Trading Session and Late Trading Session. By excluding those trading sessions where there may be less quoting at the NBB or NBO, at least initially, the Exchange believes this proposal does not impose any burden on intramarket competition by reducing any potential impact to an Equity Member's Percent Time at NBBO calculation, which may otherwise lead to a lower tier and associated reduced rebate pursuant to the NBBO Setter Plus Table.

The Exchange believes its proposal to apply the NBBO Setter Additive Rebate and NBBO First Joiner Additive Rebate only to orders executed during the Regular Trading Session will not impose any burden on intramarket competition because the Exchange cannot predict with certainty what liquidity during the Early and Late Trading Sessions will look like, at least initially. As mentioned above, the Exchange will only be able to begin collecting data regarding

⁵² See supra note 17.

liquidity during the Early Trading Session and Late Trading Session on February 20, 2025. The Exchange believes that the Early Trading Session and Late Trading Session may have less trading activity at the onset of those extended trading hours, with less representative quoting from market participants. In these circumstances, the Exchange believes the appropriate action is to initially apply the NBBO Setter Additive Rebate and NBBO First Joiner Additive Rebate only to orders executed during the Regular Trading Session while the Exchange monitors liquidity and trading activity during the extended trading hours.

The Exchange notes that, while the additive rebates described above will not be applicable during the Early and Late Trading Sessions, the Exchange will aggregate the Added Displayed Volume executed by each Equity Member during the Early Trading Session and Late Trading Session with their similar volume executed during the Regular Trading Session. This will provide additional opportunities for Equity Members to achieve higher tiers pursuant to the NBBO Program, which corresponds to higher rebates that Equity Members may receive based on increasing volume thresholds. The Exchange believes that this may incentivize Equity Members to submit additional order flow, thereby contributing to a deeper and more liquid market and promoting price discovery and market quality on the Exchange to the benefit of all market participants and enhancing the attractiveness of the Exchange as a trading venue.

The Exchange believes that its proposal to increase the fee for executions of orders in securities priced at or above \$1.00 per share that remove liquidity from the Exchange will not impose any burden on intramarket competition because, even with the increase, the Exchange's proposed standard fee of \$0.00295 per share for executions of all orders in securities priced at or above \$1.00 per share that remove liquidity from the Exchange remains competitive with the standard fee to remove liquidity in securities priced at or above \$1.00 per share charged by other

equity exchanges.⁵³

The Exchange believes its proposal to remove the Step-Up Rebate from the NBBO Program and delete the associated text will not impose any burden in intramarket competition because this change is designed to remove text for an enhanced rebate that will no longer apply following its expiration on January 31, 2025. This change will provide clarity in the Fee Schedule for Equity Members regarding which rebates they can achieve.

Finally, the Exchange believes that its proposal to amend certain fees and rebates for orders routed to away exchanges will not impose any burden in intramarket competition because competing exchanges that offer similar functionality charge similar fees (or provides similar rebates) as those proposed herein, and the Exchange proposes to recoup costs that are incurred when routing orders to away exchanges on behalf of Equity Members.

Intermarket Competition

The Exchange believes its proposal will benefit competition as the Exchange operates in a highly competitive market. Equity Members have numerous alternative venues they may participate on and direct their order flow to, including seventeen other equities exchanges and numerous alternative trading systems and other off-exchange venues. As noted above, no single registered equities exchange currently has more than approximately 14% of the total market share of executed volume of equities trading. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. Moreover, the Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow in response to new or different pricing structures being introduced to the market.

⁵³ See supra note 24.

Accordingly, competitive forces constrain the Exchange's transaction fees and rebates generally, including with respect to executions of all orders in securities priced at or above \$1.00 per share that remove liquidity from the Exchange, fees to be assessed and rebates to be provided during extended trading hours, and additive and enhanced rebate calculations that may impact liquidity on the Exchange, including orders that set or join the NBBO. Market participants can readily choose to send their orders to other exchanges and off-exchange venues if they deem fee levels at those other venues to be more favorable.

As described above, the proposed changes primarily relate to fees and rebates for orders executed upon the introduction of the Early Trading Session and Late Trading Session, which the Exchange believes will encourage additional order flow and trading activity on the Exchange, thereby promoting market quality through fees and rebates that are comparable to those in place at other exchanges. Accordingly, the Exchange believes the proposal would not burden, but rather promote, intermarket competition by enabling it to better compete with other exchanges that offer similar extended trading hours to market participants.

Additionally, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."⁵⁴ The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. circuit stated: "[n]o one disputes that competition for order

⁵⁴ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

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 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 possess a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’⁵⁵ Accordingly, the Exchange does not believe its proposed pricing changes impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

No written comments were either solicited or received.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Pursuant to Section 19(b)(3)(A)(ii) of the Act,⁵⁶ and Rule 19b-4(f)(2) thereunder⁵⁷ the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

⁵⁵ See NetCoalition v. SEC, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSE-2006-21)).

⁵⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

⁵⁷ 17 CFR 240.19b-4.

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

1. Completed notice of proposed rule change for publication in the Federal Register.
5. Copy of the applicable section of the Fee Schedule.