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–ISE–2023–27 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–ISE–2023–27. 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–ISE–2023–27 and should be submitted on or before December 12, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–25665 Filed 11–20–23; 8:45 am]

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[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98956; File No. SR–PEARL–2023–63]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAX Pearl Options Fee Schedule

November 15, 2023.

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 November 8, 2023, MIAX PEARL, LLC (''MIAX Pearl'' or ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Pearl Options Exchange Fee Schedule (the ''Fee Schedule'').

The text of the proposed rule change is available on the Exchange's website at *https://www.miaxglobal.com/markets/us-options/pearl-options/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 proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The purpose of the proposed rule change is to amend Section 1)a) of the Fee Schedule, Exchange Rebates/Fees—Add/Remove Tiered Rebates/Fees, for the MIAX Pearl Market Maker[3] origin to: (1) amend and clarify the cross-asset volume based requirement contained in Tier 2 and related footnote ''#'' following the Marker Maker origin table; and (2) adopt an alternative volume criteria for the Tier 2 rebates and fees for Market Makers with an additional explanatory note. The Exchange originally filed this proposal on October 31, 2023 (SR–PEARL–2023–61). On November 8, 2023, the Exchange withdrew SR–PEARL–2023–61 and refiled this proposal.

Background

The Exchange currently assesses transaction rebates and fees to all market participants which are based upon the total monthly volume executed by the Member[4] on MIAX Pearl in the relevant, respective origin type (not including Excluded Contracts)[5] (as the numerator) expressed as a percentage of (divided by) TCV[6] (as the denominator). In

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''Market Maker'' means a Member registered with the Exchange for the purpose of making markets in options contracts traded on the Exchange and that is vested with the rights and responsibilities specified in Chapter VI of Exchange Rules. *See* the Definitions section of the Fee Schedule and Exchange Rule 100.

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

[5] The term ''Excluded Contracts'' means any contracts routed to an away market for execution. *See* the Definitions section of the Fee Schedule.

[6] The term ''TCV'' means total consolidated volume calculated as the total national volume in those classes listed on MIAX Pearl for the month for which the fees apply, excluding consolidated volume executed during the period time in which the Exchange experiences an ''Exchange System Disruption'' (solely in the option classes of the affected Matching Engine (as defined below)). The term ''Exchange System Disruption,'' which is defined in the Definitions section of the Fee Schedule, means an outage of a Matching Engine or collective Matching Engines for a period of two consecutive hours or more, during trading hours. The term ''Matching Engine,'' which is also defined in the Definitions section of the Fee Schedule, is a part of the MIAX Pearl electronic system that processes options orders and trades on a symbol-by-symbol basis. Some Matching Engines will process option classes with multiple root symbols, and other Matching Engines may be dedicated to one single option root symbol (for example, options on SPY may be processed by one single Matching Engine that is dedicated only to SPY). A particular root symbol may only be assigned to a single designated Matching Engine. A particular root symbol may not be assigned to multiple Matching Engines. The Exchange believes that it is reasonable and appropriate to select two consecutive hours as the amount of time necessary to constitute an Exchange System Disruption, as two hours equates

Continued

addition, the per contract transaction rebates and fees are applied retroactively to all eligible volume for that origin type once the respective threshold tier (''Tier'') has been reached by the Member. The Exchange aggregates the volume of Members and their Affiliates.[7] Members that place resting liquidity, *i.e.,* orders resting on the book of the MIAX Pearl System,[8] are paid the specified ''maker'' rebate (each a ''Maker''), and Members that execute against resting liquidity are assessed the specified ''taker'' fee (each a ''Taker''). For opening transactions and ABBO[9] uncrossing transactions, per contract transaction rebates and fees are waived for all market participants. Finally, Members are assessed lower transaction fees and receive lower rebates for order executions in standard option classes in the Penny Interval Program[10] (''Penny Classes'') than for order executions in standard option classes which are not in the Penny Interval Program (''Non-Penny Classes''), where Members are assessed higher transaction fees and receive higher rebates.

Volume Calculations for Market Maker Origin Tier 2

Currently, the Exchange provides three methods in which a Market Maker may qualify for the fees and rebates associated with Tier 2 of the Market Maker origin. A Market Maker needs only to satisfy one of the methods in order to receive the fees and rebates associated with Tier 2.

Pursuant to the first method, Market Makers will qualify for the Maker rebates and Taker fees in Tier 2 of the Market Maker origin table if the Market Maker executes total monthly volume, not including Excluded Contracts, in all classes above 0.20% to 0.50% of TCV.

The second method is based upon the total monthly volume executed by a Market Maker collectively in SPY/QQQ/IWM options on the Exchange, expressed as a percentage of total consolidated national volume in SPY/QQQ/IWM options.[11] Pursuant to this alternative volume criteria, a Market Maker will qualify for the Maker rebates and Taker fees in Tier 2 if the Market Maker's total executed monthly volume, not including Excluded Contracts, in SPY/QQQ/IWM options on MIAX Pearl is above 0.55% of total consolidated national monthly volume in SPY/QQQ/IWM options. For this calculation, volume that is from adding liquidity (Maker) and taking liquidity (Taker) in SPY/QQQ/IWM options is counted towards the alternative volume criteria, and the 0.55% threshold does not have to be reached individually in each of the three symbols.

The Exchange notes that MIAX Pearl Equities[12] implemented a fee change effective September 1, 2023, which, among other things, eliminated the ''Add Volume Tiers'' table and associated rebates on MIAX Pearl Equities.[13] Pursuant to this proposal, the Exchange seeks to amend the third method for the volume calculation for Tier 2 of the Market Maker origin in light of the elimination of the Add Volume Tiers on MIAX Pearl Equities, as described in more detail below. For the sake of clarity, the Exchange will describe in the paragraph immediately below the third volume calculation method as currently stated in the Fee Schedule; the proposed changes to the third volume calculation method will be described further below to account for the September 1, 2023 fee changes on MIAX Pearl Equities that eliminated the Add Volume Tiers table and associated rebates.

As currently provided in the Fee Schedule (prior to this proposal and the original proposal), the third method is calculated using cross-asset volume requirements that require Market Makers to satisfy the requirements of Tier 2 of the Add Volume Tiers table in the MIAX Pearl Equities fee schedule,[14] and also the requirements of Tier 2 of the Midpoint Peg Order Adding Liquidity at the Midpoint Volume Tiers table (referred to herein as the ''Midpoint Volume Tiers'') in the MIAX Pearl Equities fee schedule.[15] A Midpoint Peg Order[16] on MIAX Pearl Equities is a non-displayed limit order that is assigned a working price pegged to the midpoint of the PBBO.[17]

Amendment to Cross-Asset Volume Based Requirement

The Exchange proposes to amend the Add/Remove Tiered Rebates/Fees table set forth in Section 1)a) of the Fee Schedule for the Market Maker origin to amend the cross-asset volume based requirement contained in Tier 2 and related footnote ''#'' following the Marker Maker origin table. As described above, prior to implementation of the NBBO Setter Plus Program (''NBBO Program'') on MIAX Pearl Equities, Market Makers were able to qualify for

to approximately 1.4% of available trading time per month. The Exchange notes that the term ''Exchange System Disruption'' and its meaning have no applicability outside of the Fee Schedule, as it is used solely for purposes of calculating volume for the threshold tiers in the Fee Schedule. *See* the Definitions section of the Fee Schedule.

[7] The term ''Affiliate'' means (i) an affiliate of a Member of at least 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A, or (ii) the Appointed Market Maker of an Appointed EEM (or, conversely, the Appointed EEM of an Appointed Market Maker). An ''Appointed Market Maker'' is a MIAX Pearl Market Maker (who does not otherwise have a corporate affiliation based upon common ownership with an EEM) that has been appointed by an EEM and an ''Appointed EEM'' is an EEM (who does not otherwise have a corporate affiliation based upon common ownership with a MIAX Pearl Market Maker) that has been appointed by a MIAX Pearl Market Maker, pursuant to the following process. A MIAX Pearl Market Maker appoints an EEM and an EEM appoints a MIAX Pearl Market Maker, for the purposes of the Fee Schedule, by each completing and sending an executed Volume Aggregation Request Form by email to *membership@miaxoptions.com* no later than 2 business days prior to the first business day of the month in which the designation is to become effective. Transmittal of a validly completed and executed form to the Exchange along with the Exchange's acknowledgement of the effective designation to each of the Market Maker and EEM will be viewed as acceptance of the appointment. The Exchange will only recognize one designation per Member. A Member may make a designation not more than once every 12 months (from the date of its most recent designation), which designation shall remain in effect unless or until the Exchange receives written notice submitted 2 business days prior to the first business day of the month from either Member indicating that the appointment has been terminated. Designations will become operative on the first business day of the effective month and may not be terminated prior to the end of the month. Execution data and reports will be provided to both parties. *See* the Definitions section of the Fee Schedule.

[8] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

[9] The term ''ABBO'' means the best bid(s) or offer(s) disseminated by other Eligible Exchanges (defined in Exchange Rule 1400(g)) and calculated by the Exchange based on market information received by the Exchange from OPRA. *See* the Definitions section of the Fee Schedule and Exchange Rule 100.

[10] *See* Securities Exchange Act Release No. 88992 (June 2, 2020), 85 FR 35142 (June 8, 2020) (SR–PEARL–2020–06).

[11] *See* Fee Schedule, Section 1)a), explanatory paragraph below the tables and footnotes. *See also* Securities Exchange Act Release Nos. 84592 (November 14, 2018), 83 FR 58646 (November 20, 2018) (SR–PEARL–2018–23); 90906 (January 21, 2021), 86 FR 5296 (January 19, 2021) (SR–PEARL–2020–38).

[12] The term ''MIAX Pearl Equities'' shall mean MIAX Pearl Equities, a facility of MIAX PEARL, LLC. *See* Exchange Rule 1901.

[13] *See* Securities Exchange Act Release No. 98472 (September 21, 2023), 88 FR 66533 (September 27, 2023) (SR–PEARL–2023–45) (eliminating the ''Add Volume Tiers'' table and associated rebates due to the adoption of the NBBO Setter Plus Program, which incorporated similar aspects and rebate amounts as the Add Volume Tiers).

[14] *See id.* (describing the Add Volume Tiers, requirements and associated rebate amounts and how the Add Volume Tiers were incorporated into the NBBO Setter Plus Program).

[15] *See* MIAX Pearl Equities Fee Schedule, Section 1)e), Midpoint Peg Order Adding Liquidity at Midpoint Volume Tiers.

[16] *See* Exchange Rule 2614(a)(3).

[17] With respect to the trading of equity securities, the term ''Protected NBB'' or ''PBB'' shall mean the national best bid that is a Protected Quotation, the term ''Protected NBO'' or ''PBO'' shall mean the national best offer that is a Protected Quotation, and the term ''Protected NBBO'' or ''PBBO'' shall mean the national best bid and offer that is a Protected Quotation. *See* Exchange Rule 1901.

the Maker rebates and Taker fees in Tier 2 of the Market Maker origin if the Market Maker satisfied the requirements of Tier 2 of the Add Volume Tiers table and Tier 2 of the Midpoint Volume Tiers table in the MIAX Pearl Equities fee schedule.[18]

Beginning September 1, 2023, MIAX Pearl Equities incorporated aspects and rebate amounts of the Add Volume Tiers with the implementation of the NBBO Program and eliminated the Add Volume Tiers table from the MIAX Pearl Equities fee schedule.[19] In light of the elimination of the Add Volume Tiers table in the MIAX Pearl Equities fee schedule, the Exchange proposes to amend the cross-asset volume based requirement contained in Tier 2 of the Market Maker origin table and related footnote ''#'' following the Marker Maker origin table.

In particular, the Exchange proposes to replace the words ''Add Volume Tiers'' in Tier 2 of the Market Maker origin table with the words ''NBBO Setter Plus Program.'' [20] Under the Add Volume Tiers table, MIAX Pearl Equities provided enhanced rebates to Equity Members [21] for executions of orders in securities priced at or above $1.00 per share that added displayed liquidity (''Added Displayed Volume'') to MIAX Pearl Equities that met specified volume thresholds. As it pertains to this proposal regarding Tier 2 of the Market Maker origin, an Equity Member was able to qualify for MIAX Pearl Equities' Add Volume Tiers, Tier 2, by achieving an ADAV [22] of at least 0.10% of total consolidated volume.[23]

With the implementation of the NBBO Program, MIAX Pearl Equities adopted a tiered-rebate structure where Equity Members are able to achieve enhanced rebates for executions of orders in securities priced at or above $1.00 per share that add displayed liquidity pursuant to one of three different methods for calculating volume thresholds. The three volume-based methods to determine the Equity Member's tier for purposes of the NBBO Program are calculated in parallel in each month, and each Equity Member receives the highest tier achieved from any of the three methods each month.

As it pertains to this proposal, volume calculation Method 1 of the NBBO Program incorporates the volume calculation method of the Add Volume Tiers table, which utilizes an Equity Member's ADAV as a percentage of TCV to determine the applicable tier. In particular, an Equity Member qualifies for Tier 2 of the NBBO Program by achieving an ADAV of at least 0.08% and less than 0.25% of TCV. Under volume calculation Method 2 of the NBBO Program, MIAX Pearl Equities calculates the tier achieved based on an Equity Member's ''NBBO Set Volume'' [24] as a percentage of TCV. In particular, an Equity Member qualifies for the Tier 2 of the NBBO Program by achieving an NBBO Set Volume of at least 0.02% and less than 0.03% of TCV. Under volume calculation Method 3 of the NBBO Program, MIAX Pearl Equities calculates the tier achieved based on an Equity Member's ADV as a percentage of TCV. In particular, an Equity Member qualifies for Tier 2 of the NBBO Program by achieving an ADV of at least 0.20% and less than 0.60% of TCV.

With the proposed change to replace the words ''Add Volume Tiers'' in Tier 2 of the Market Maker origin table with the words ''NBBO Setter Plus Program,'' Market Makers will be able to qualify for the Maker rebates and Taker fees in Tier 2 of the Market Maker origin table if the Market Maker satisfies the requirements of Tier 2 of both the NBBO Program and Tier 2 of the Midpoint Volume Tiers table in the MIAX Pearl Equities fee schedule.[25]

The purpose of this change is to provide consistency and clarity in the Fee Schedule as the Add Volume Tiers table has been eliminated in the MIAX Pearl Equities fee schedule. The Exchange believes that this change provides more opportunities for market participants to satisfy this cross-asset volume requirement because there are three volume calculation methods (described above) available for an Equity Member to achieve Tier 2 of the NBBO Program, as opposed to the Add Volume Tiers table, which only provided one volume calculation method.

Adopt Alternative Volume Criteria in Tier 2 of the Market Maker Origin

The Exchange also proposes to amend the Add/Remove Tiered Rebates/Fees table set forth in Section 1)a) of the Fee Schedule for the Market Maker origin to adopt a fourth method by which a Market Maker may qualify for the fees and rebates in Tier 2 of the Market Maker origin table. In particular, the Exchange proposes that a Market Maker will qualify for the Maker rebates and Taker fees in Tier 2 if the Market Maker's total executed monthly volume, not including Excluded Contracts, in SPY/QQQ/IWM options on MIAX Pearl is above 0.30% of SPY/QQQ/IWM TCV when adding liquidity. The Exchange proposes to amend the explanatory paragraph below the origin tables in Section 1)a) of the Fee Schedule to add a sentence for the new alternative volume criteria. Specifically, in Tier 2 for MIAX Pearl Market Makers, the proposed alternative volume criteria (above 0.30% in SPY/QQQ/IWM when adding liquidity) will be calculated based on the total monthly volume that added liquidity executed by the Market Maker collectivity in SPY, QQQ, and IWM options on MIAX Pearl in the relevant origin type, not including Excluded Contracts (as the numerator), expressed as a percentage of (divided by) SPY/QQQ/IWM TCV (as the denominator).

The purpose of this proposed change is for business and competitive reasons. The Exchange notes that at least one other competing exchange has a similar alternative volume calculation method to achieve a higher rebate that is based on a member's combined posted interest in SPY, QQQ, IWM options expressed as a percentage of industry-wide average daily volume in SPY/QQQ/IWM options.[26]

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[18] *See supra* note 13.

[19] *See id.* (noting that under volume calculation Method 1 of the NBBO Program, tiered rebates are based on an Equity Member's average daily added volume (''ADAV'') as a percentage of TCV, which is the same method that MIAX Pearl Equities used to calculate the volume requirements for the Add Volume Tiers table).

[20] The Exchange propose to make the same change to footnote ''#'' following the Market Maker origin table in Section 1)a) of the Fee Schedule.

[21] The term ''Equity Member'' means a Member authorized by the Exchange to transact business on MIAX Pearl Equities. *See* Exchange Rule 1901.

[22] With respect to MIAX Pearl Equities, the term ''ADAV'' means average daily added volume calculated as the number of shares added per day and ''ADV'' means average daily volume calculated as the number of shares added or removed, combined, per day. ADAV and ADV are calculated on a monthly basis. *See* the Definitions section of the MIAX Pearl Equities Fee Schedule.

[23] With respect to MIAX Pearl Equities, total consolidated volume, or ''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 MIAX Pearl Equities Fee Schedule.

[24] The term ''NBBO Set Volume'' means the ADAV in all securities of an Equity Member that sets the NBB or NBO on MIAX Pearl Equities. *See* the Definitions section of the MIAX Pearl Equities Fee Schedule.

[25] *See also* Securities Exchange Act Release No. 98472 (September 21, 2023), 88 FR 66533 (September 27, 2023) (SR–PEARL–2023–45) (describing the three alternative volume calculation methods for an Equity Member to achieve Tier 2 of the NBBO Program). Equity Members may qualify for Tier 2 of the Midpoint Volume Tiers table by achieving an ADAV for the current month consisting of midpoint peg orders in securities priced at or above $1.00 per share that execute at the midpoint of the PBBO and add liquidity to MIAX Pearl Equities in an amount equal to or greater than 1,000,000 shares. *See* MIAX Pearl Equities Fee Schedule, Section 1)e).

[26] *See* NYSE Arca Options Fee Schedule, Market Maker Penny and SPY Posting Credit Tiers, Super Tier II, *available at https://www.nyse.com/*

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With the proposed change, the four different volume criteria available for Tier 2 of the Market Maker origin are based upon either: (1) the total monthly volume executed by the Market Maker in all options classes on MIAX Pearl, not including Excluded Contracts, (as the numerator), expressed as a percentage of (divided by) TCV (as the denominator); or (2) the total monthly volume executed by the MIAX Pearl Market Maker collectively in SPY/QQQ/IWM options on MIAX Pearl, not including Excluded Contracts, (as the numerator), expressed as a percentage of (divided by) SPY/QQQ/IWM TCV (as the denominator); or (3) the Market Maker is in Tier 2 of the NBBO Program on MIAX Pearl Equities and is also in Tier 2 of the Midpoint Volume Tiers program on MIAX Pearl Equities; or (4) the added liquidity by the MIAX Pearl Market Maker collectively in SPY/QQQ/IWM options on MIAX Pearl, not including Excluded Contracts, (as the numerator), expressed as a percentage of (divided by) SPY/QQQ/IWM TCV (as the denominator). Once any one of the aforementioned four volume criteria thresholds in Tier 2 of the Market Maker origin is reached by the Market Maker, the Tier 2 per contract rebates and fees apply to all volume in all options classes executed by that MIAX Pearl Market Maker.

Implementation

The proposed changes are immediately effective.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act [27] in general, and furthers the objectives of Section 6(b)(4) of the Act,[28] in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange Members and issuers and other persons using its facilities, and 6(b)(5) of the Act,[29] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [30]

There are currently 17 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, as of October 30, 2023, no single exchange has more than approximately 12–13% of the multiply-listed equity options market share for the month of October 2023.[31] Therefore, no exchange possesses significant pricing power. More specifically, as of October 30, 2023, the Exchange had a market share of approximately 6.13% of executed volume of multiply-listed equity options for the month of October 2023.[32]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can discontinue or reduce use of certain categories of products and services, terminate an existing membership or determine to not become a new member, and/or shift order flow, in response to transaction fee changes. For example, on February 28, 2019, the Exchange filed with the Commission a proposal to increase Taker fees in certain Tiers for options transactions in certain Penny Classes for Priority Customers and decrease Maker rebates in certain Tiers for options transactions in Penny Classes for Priority Customers (which fee was to be effective March 1, 2019).[33] The Exchange experienced a decrease in total market share for the month of March 2019, after the proposal went into effect. Accordingly, the Exchange believes that its March 1, 2019, fee change, to increase certain transaction fees and decrease certain transaction rebates, may have contributed to the decrease in MIAX Pearl's market share and, as such, the Exchange believes competitive forces constrain the Exchange's, and other options exchanges, ability to set transaction fees and market participants can shift order flow based on fee changes instituted by the exchanges.

The Exchange believes that its proposal represents an equitable allocation of fees and is not unfairly discriminatory because it applies uniformly to all Market Makers, in that all Market Makers have the opportunity to compete for and achieve the proposed new alternative volume criteria of Tier 2, and the Tier 2 fees and rebates will apply uniformly to all Market Makers that achieve Tier 2. While the Exchange has no way of knowing whether this proposed rule change would definitively result in any particular Market Maker achieving the proposed alternative volume criteria, the proposed alternative volume criteria is available for any Market Maker. To the extent a Member participates on the Exchange but not on MIAX Pearl Equities, the Exchange believes that the proposal is still reasonable, equitably allocated and not unfairly discriminatory with respect to such Member based on the overall benefit to the Exchange resulting from the success of its equities platform. Particularly, the Exchange believes that additional such success allows the Exchange to continue to provide and potentially expand its existing incentive programs to the benefit of all participants on the Exchange, whether they participate on MIAX Pearl Equities or not. Additionally, a Market Maker that is not a Member of MIAX Pearl Equities may still satisfy the current primary volume criteria or the two other alternative volume criteria (including the newly proposed alternative volume criteria) that are not based on meeting certain volume thresholds on MIAX Pearl Equities, to be eligible for Tier 2 fees and rebates for the Market Maker origin.

Additionally, the Exchange believes its proposal represents a reasonable attempt to continue to incentivize market participants to increase the number and variety of orders sent to the Exchange for execution. Specifically, the Exchange believes its proposal to amend the cross-asset volume requirements to require Market Makers to achieve Tier 2 of the NBBO Program and Midpoint Volume Tiers table on MIAX Pearl Equities will continue to

publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf (providing additional ($0.03) credit per contract to electronic executions of market maker posted interest in Penny Issues provided an OTP Holder or OTP Firm achieves (i) at least 0.55% of total combined IWM, QQQ, and SPY industry ADV from Market Maker posted interest in IWM, QQQ, and SPY, and (ii) ETP Holder and Market Maker posted volume in Tape B Adding ADV that is equal to at least 1.50% of US Tape B CADV executed on NYSE Arca Equity Market for the billing month).

[27] 15 U.S.C. 78f(b).

[28] 15 U.S.C. 78f(b)(4).

[29] 15 U.S.C. 78f(b)(1) and (b)(5).

[30] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

[31] *See* the ''Market Share'' section of the Exchange's website, *available at https://www.miaxglobal.com/* (last visited October 30, 2023).

[32] *See id.*

[33] *See* Securities Exchange Act Release No. 85304 (March 13, 2019), 84 FR 10144 (March 19, 2019) (SR–PEARL–2019–07).

incentivize participation in greater volume from cross-asset activity, which would improve the overall quality of the Exchange's marketplace to the benefit of all market participants, both on the options and equities platforms of MIAX Pearl. The Exchange notes that such cross-asset volume requirements is not new or novel and at least one other competing exchanges offers a similar method to achieve higher rebates on its options market.[34]

The Exchange believes its proposal to replace the Add Volume Tiers, Tier 2 requirement with the new requirement to achieve Tier 2 in the NBBO Program as an alternative method to achieve Tier 2 in the Market Maker origin table is reasonable because it provides more opportunities for market participants to satisfy this cross-asset volume requirement since there are three volume calculation methods (described above) available for an Equity Member to achieve Tier 2 of the NBBO Program, as opposed to the Add Volume Tiers table, which only provided one volume calculation method. Further, volume calculation Method 1 under the NBBO Program is nearly identical to the Add Volume Tier requirement prior to it being eliminated. An Equity Member was able to qualify for Add Volume Tier 2 by achieving an ADAV of at least 0.10% of TCV. An Equity Member qualifies for Tier 2 of the NBBO Program by achieving an ADAV of at least 0.08% and less than 0.25% of TCV. Accordingly, the Exchange believes this proposed change is reasonable because it is provides additional opportunities to Equity Members to achieve Tier 2 of the NBBO Program through three volume calculation methods, including one volume calculation method that is the similar in calculation and required threshold as Add Volume Tier 2 prior to its elimination.

The Exchange also believes that its new proposed qualifications for the Tier 2 alternative volume criteria for MIAX Pearl Market Makers is equitable and not unfairly discriminatory because the Exchange will uniformly assess the rebates and fees for any Market Makers qualifying for Tier 2. Finally, encouraging Market Makers to add greater liquidity benefits all market participants, both on the options and equities platforms of MIAX Pearl, in the quality of order interaction.

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

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

Intra-Market Competition

The Exchange does not believe that its proposal will impose any burden on intra-market competition as the Exchange believes that its proposal will not place any market participant at a competitive disadvantage as Market Makers may satisfy any of the volume criteria requirements to be eligible for the Tier 2 fees and rebates for the Market Maker origin. Further, for Market Makers that are Members of only the options trading facility of MIAX Pearl, and not the equities trading facility, those Market Makers may achieve the rebates and fees associated with Tier 2 of the Market Maker origin table by executing volume that does not require them to be MIAX Pearl Equity Members via the alternative methods described above. The Exchange believes that the proposed changes should continue to encourage the provision of liquidity in options that enhances the quality of the Exchange's market and increases the number of trading opportunities on the Exchange for all participants who will be able to compete for such opportunities. Additionally, as discussed, the proposed changes are ultimately aimed at attracting greater order flow to the Exchange, which benefits all market participants by providing more trading opportunities.

Inter-Market Competition

The Exchange does not believe that its proposal will impose any burden on inter-market competition and the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable.

There are currently 17 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than approximately 12–13% of the market share of executed volume of multiply-listed equity and ETF options trades as of October 30, 2023, for the month of October 2023.[35] Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, as of October 30, 2023, the Exchange had a market share of approximately 6.13% of executed volume of multiply-listed equity and ETF options for the month of October 2023.[36] In such an environment, the Exchange must continually adjust its fees and tiers to remain competitive with other options exchanges. Because competitors are free to modify their own fees and tiers in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. The Exchange believes that the proposed rule changes reflect this competitive environment because they modify the Exchange's fees and Tiers in a manner that encourages market participants to continue to provide liquidity and to send order flow to the Exchange

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,[37] and Rule 19b–4(f)(2)[38] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

[34] *See* NYSE Arca Options Fee Schedule, Market Maker Penny and SPY Posting Credit Tiers, Super Tier II, *available at https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf* (providing a credit of $0.42 when a Firm has at least 0.15% of TCADV from Market Maker posted interest in all issues, plus ETP Holder and Market Maker posted volume in Tape B Securities (''Tape B Adding ADV'') that is equal to at least 1.40% of US Tape B consolidated average daily volume (''CADV'') for the billing month executed on NYSE Arca Equity Market).

[35] *See supra* note 31.

[36] *See id.*

[37] 15 U.S.C. 78s(b)(3)(A)(ii).

[38] 17 CFR 240.19b–4(f)(2).

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–2023–63 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–2023–63. 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–2023–63 and should be submitted on or before December 12, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[39]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–25669 Filed 11–20–23; 8:45 am]

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[39] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98957; File No. SR–CBOE–2023–054]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Order Approving a Proposed Rule Change To Amend Rule 4.13 To Expand the Nonstandard Expirations Program To Include P.M.-Settled Options on Broad-Based Indexes That Expire on Tuesday or Thursday

November 15, 2023.

I. Introduction

On September 28, 2023, Cboe Exchange, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Rule 4.13(e), which governs its Nonstandard Expirations Program (''Program''), to permit p.m.-settled options on any broad-based index eligible for standard options trading that expire on Tuesday or Thursday. The proposed rule change published for comment in the **Federal Register** on October 4, 2023.[3] The Commission did not receive any comment letters and is approving the proposed rule change.

II. Description of the Proposal

The Exchange proposes to amend Rule 4.13(e), which governs its Program, to permit p.m.-settled options on any broad-based index eligible for standard options trading that expire on Tuesday or Thursday. Currently under the Program, the Exchange is permitted to list p.m.-settled options on any broad-based index eligible for standard trading that expire on: (1) any Monday, Wednesday, or Friday (other than the third Friday-of-the-month or days that coincide with an end-of-month expiration and, with respect to options on the S&P 500 Index (''SPX options'') and the Mini-S&P 500 Index (''XSP options'') any Tuesday or Thursday (''Weekly Expirations'') and (2) the last trading day of the month (''End of Month Expirations'' or ''EOMs'').[4] The proposal expands the availability of Tuesday and Thursday Weekly Expirations to all broad-based indexes eligible for standard options trading.[5]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 98621 (September 28, 2023), 88 FR 68896 (''Notice'').

[4] *See* Rule 4.13(e).

[5] *See* Notice, *supra* note 3 at 68897.

The Program for Weekly Expirations will apply to any broad-based index option with Tuesday and Thursday expirations in the same manner as it currently applies to all other p.m.-settled broad-based index options with Monday, Wednesday, and Friday expirations and to SPX and XSP options with Tuesday and Thursday expirations.[6] Specifically, as set forth in Rule 4.13(e), Weekly Expirations, including the proposed Tuesday and Thursday expirations, are subject to all provisions of Rule 4.13 and treated the same as options on the same underlying index that expire on the third Friday of the expiration month; provided, however, that Weekly Expirations are p.m.-settled, and new series in Weekly Expirations may be added up to and including on the expiration date for an expiring Weekly Expiration.[7]

The maximum number of expirations that may be listed for each Weekly Expiration (*i.e.,* a Monday expiration, Tuesday expiration, Wednesday expiration, Thursday expiration, or Friday expiration, as applicable) in a given class is the same as the maximum number of expirations permitted in Rule 4.13(a)(2) for standard options on the same broad-based index.[8] Weekly Expirations need not be for consecutive Monday, Tuesday, Wednesday, Thursday, or Friday expirations as applicable; however, the expiration date of a nonconsecutive expiration may not be beyond what would be considered the last expiration date if the maximum number of expirations were listed consecutively.[9] Weekly Expirations that are first listed in a given class may expire up to four weeks from the actual listing date.[10] In addition, like all Weekly Expirations, pursuant to Rule 4.13(e)(3), transactions in expiring broad-based index options with Tuesday and Thursday expirations may be effected on the Exchange between the hours of 9:30 a.m. and 4:00 p.m. eastern time on their last trading day.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[11] In

[6] *See id.*

[7] *See id.*

[8] *See id.*

[9] *See id.*

[10] For a more detailed description of the proposed Tuesday or Thursday expirations, *see* Notice, *supra* note 3.

[11] In approving this proposed rule change, the Commission has considered the proposed rule's