This estimated cost also includes expense associated with providing the necessary engineering and support personnel to transition those Members who wish to acquire two additional Limited Service MEO Ports. Further, the Exchange projects that the annualized revenue from the two additional Limited Service MEO Ports will be approximately $67,200 (assuming seven Members purchase the two additional Limited Service MEO Ports). Therefore, the Exchange's upfront cost in expanding its network to provide its Members with two additional Limited Service MEO Ports—approximately $175,000—is significant relative to the anticipated annualized revenue the Exchange expects to bring in from two additional Limited Service MEO Ports—approximately $67,200. Further, the Exchange anticipates it will incur approximately $76,408 in annualized ongoing operating expense (''OpEx'') in order to support the expanded network and two additional Limited Service MEO Ports. Thus, even excluding the upfront CapEx of $175,000, the Exchange is not generating a supra-competitive profit from the provision of two additional Limited Service MEO Ports. In fact, even excluding the one-time CapEx cost of $175,000, the Exchange anticipates generating an annual loss from the provision of two additional Limited Service MEO Ports of ($9,208)—that is, $67,200 in revenue minus $76,408 in expense equates to a loss of ($9,208) to support the additional ports annually.

The Exchange also notes that no other exchange has a similar cap on the amount of ports that firms can purchase in their rulebooks or fee schedules and those exchanges have the same requirements under Section 6(b)(5) of the Exchange Act [36] as MIAX Pearl.[37]

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The proposed rule change will not impose a burden on competition but will benefit competition by enhancing the Exchange's ability to compete by providing additional services to market participants. It is not intended to address a competitive issue. Rather, the proposal is intended to allow the Exchange to increase its inventory of MEO Ports to meet increased Member demand and increased message traffic resulting from greater marketplace volatility. The Exchange also does not believe that the proposed rule change will impose a burden on intramarket competition because additional Limited Service MEO Ports are available to all Members on an equal basis. It is a business decision of each Member whether to pay for the additional Limited Service MEO Ports.

*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,[38] and Rule 19b–4(f)(2) [39] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–PEARL–2021–23 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–2021–23. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PEARL–2021–23 and should be submitted on or before June 8, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[40]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2021–10380 Filed 5–17–21; 8:45 am]

**BILLING CODE 8011–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–91857; File No. SR–MIAX–2021–19]**

## Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule To Remove the Cap on the Number of Additional Limited Service Ports Available to Market Makers

May 12, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 10, 2021, Miami International Securities

[36] 15 U.S.C. 78f(b)(5).

[37] *See supra* note 14.

[38] 15 U.S.C. 78s(b)(3)(A)(ii).

[39] 17 CFR 240.19b–4(f)(2).

[40] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

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

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

The Exchange is filing a proposal to amend the MIAX Options Fee Schedule (the ''Fee Schedule'') to remove the cap on the number of additional Limited Service MIAX Express Interface (''MEI'') Ports (defined below) available to Market Makers.[3] The Exchange does not propose to amend the fees for additional Limited Service MEI Ports.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings,* at MIAX's principal office, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange proposes to delete footnote 30 of Section 5)d)ii) of the Fee Schedule to remove the cap on the number of additional Limited Service MEI Ports available to Market Makers. The Exchange does not propose to amend the fees charged for any additional Limited Service MEI Ports purchased by Market Makers.

The Exchange initially filed this proposal to remove the cap on the number of additional Limited Service MEI Ports available to Market Makers on April 9, 2021.[4] On April 12, 2021, the Exchange withdrew the First Proposed Rule Change and refiled this proposal to make a technical correction.[5] On April 22, 2021, the Exchange withdrew the Second Proposed Rule Change and refiled this proposal (without increasing the actual fee amounts) to provide further clarification regarding the Exchange's revenues, costs, and profitability any time more Limited Service MEI Ports become available, in general, (including information regarding the Exchange's methodology for determining the costs and revenues for additional Limited Service MEI Ports).[6] On May 3, 2021, the Exchange withdrew the Third Proposed Rule Change and refiled this proposal to further clarify its cost methodology.[7] On May 10, 2021, the Exchange withdrew the Fourth Proposed Rule Change and refiled this proposal.

Currently, the Exchange assesses monthly MEI Port Fees on Market Makers based upon the number of MIAX matching engines[8] used by the Market Maker. The Exchange allocates two (2) Full Service MEI Ports[9] and two (2) Limited Service MEI Ports[10] per matching engine to which each Market Maker connects. The Full Service MEI Ports, Limited Service MEI Ports and the additional Limited Service MEI Ports all include access to the Exchange's primary and secondary data centers and its disaster recovery center. Market Makers may request additional Limited Service MEI Ports for which they are assessed the existing $100 monthly fee for each additional port they request. This fee has been unchanged since 2016.[11]

The Exchange originally added the Limited Service MEI Ports to enhance the MEI Port connectivity available to Market Makers, and subsequently made additional Limited Service MEI Ports available to Market Makers.[12] Limited Service MEI Ports have been well received by Market Makers since their addition. Market Makers are currently limited to purchasing eight (8) additional Limited Service MEI Ports per matching engine, for a total of ten (10) per matching engine.[13]

The Exchange now proposes to delete footnote 30 in Section 5)d)ii) of the Fee Schedule to remove the cap on the number of additional Limited Service MEI Ports that are available to Market Makers. The Exchange notes that no other exchange provides similar caps concerning connectivity and access in their rulebooks or fee schedules.[14] Including the cap on the number of additional Limited Service MEI Ports in the Fee Schedule unnecessarily hampers the Exchange's ability to adjust access to the Exchange's network in order to ensure that the Exchange meets its obligations under the Act such that access to the Exchange is offered on

[3] The term ''Market Makers'' refers to Lead Market Makers (''LMMs''), Primary Lead Market Makers (''PLMMs''), and Registered Market Makers (''RMMs'') collectively. *See* Exchange Rule 100.

[4] *See* SR–MIAX–2021–10 (the ''First Proposed Rule Change'').

[5] *See* SR–MIAX–2021–11 (the ''Second Proposed Rule Change'').

[6] *See* SR–MIAX–2021–15 (the ''Third Proposed Rule Change'').

[7] *See* SR–MIAX–2021–17 (the ''Fourth Proposed Rule Change'').

[8] A ''matching engine'' is a part of the MIAX electronic system that processes options quotes and trades on a symbol-by-symbol basis. Some matching engines will process option classes with multiple root symbols, and other matching engines will be dedicated to one single option root symbol (for example, options on SPY will 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. *See* Fee Schedule, Section 5)d)ii), note 29.

[9] Full Service MEI Ports provide Market Makers with the ability to send Market Maker quotes, eQuotes, and quote purge messages to the MIAX System. Full Service MEI Ports are also capable of receiving administrative information. Market Makers are limited to two Full Service MEI Ports per matching engine. *See* Fee Schedule, Section 5)d)ii), note 27.

[10] Limited Service MEI Ports provide Market Makers with the ability to send eQuotes and quote purge messages only, but not Market Maker Quotes, to the MIAX System. Limited Service MEI Ports are also capable of receiving administrative information. Market Makers initially receive two Limited Service MEI Ports per matching engine. *See* Fee Schedule, Section 5)d)ii), note 28.

[11] *See* Securities Exchange Act Release No. 79666 (December 22, 2016), 81 FR 96133 (December 29, 2016) (SR–MIAX–2016–47).

[12] *See* Securities Exchange Act Release Nos. 70137 (August 8, 2013), 78 FR 49586 (August 14, 2013) (SR–MIAX–2013–39); 70903 (November 20, 2013), 78 FR 70615 (November 26, 2013) (SR–MIAX–2013–52); 78950 (September 27, 2016), 81 FR 68084 (October 3, 2016) (SR–MIAX–2016–33); and 79198 (October 31, 2016), 81 FR 76988 (November 4, 2016) (SR–MIAX–2016–37); 90811 (December 29, 2020), 86 FR 344 (January 5, 2021) (SR–MIAX–2020–41).

[13] *See* Fee Schedule, Section 5)d)ii).

[14] *See* Cboe Exchange, Inc. Fee Schedule, available at *https://cdn.cboe.com/resources/membership/Cboe_FeeSchedule.pdf;* Cboe BZX Exchange, Inc. Options Fee Schedule, available at *https://www.cboe.com/us/options/membership/fee_schedule/bzx/;* Cboe C2 Exchange, Inc. Fee Schedule, available at *https://www.cboe.com/us/options/membership/fee_schedule/ctwo/;* Cboe EDGX Exchange, Inc. Options Fee Schedule, available at *https://www.cboe.com/us/options/membership/fee_schedule/edgx/;* The Nasdaq Stock Market LLC Options Fee Schedule, available at *https://listingcenter.nasdaq.com/rulebook/nasdaq/rules/Nasdaq%20Options%207;* Nasdaq PHLX LLC Options Fee Schedule, available at *https://listingcenter.nasdaq.com/rulebook/phlx/rules/Phlx%20Options%207;* NYSE Arca, Inc. Options Fee Schedule, available at *https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf;* NYSE American LLC Options Fee Schedule, available at *https://www.nyse.com/publicdocs/nyse/markets/american-options/NYSE_American_Options_Fee_Schedule.pdf.*

terms that are not unfairly discriminatory [15] among its Members,[16] as well as to ensure sufficient capacity and headroom in the System.[17] The Exchange monitors the System's performance and makes adjustments to its System based on market conditions and Member demand. Accordingly, the Exchange's obligations under the Act to provide access on terms that are not unfairly discriminatory and market conditions are key drivers of the System's architecture and expansion. Thus the Exchange believes a cap in the Fee Schedule is inconsistent with other exchanges access offerings and not an appropriate mechanism to govern access to the Exchange.

The Exchange also notes that adjusting the amount of available Limited Service MEI Ports does not change on a material basis the overall profitability of Limited Service MEI Ports. Any increase in revenue associated with adding more Limited Service MEI Ports is generally offset by the cost of purchasing and operating such new equipment and providing the services associated with Limited Service MEI Ports. When the Exchange provides fewer Limited Service MEI Ports, its overall expense is lower, but is generally offset by lower revenues associated with Limited Service MEI Ports. The Exchange's recent filing [18] to increase the number of additional Limited Service MEI Ports provides clear evidence of that fact.

All fees related to MEI Ports shall remain unchanged and Market Makers that voluntarily purchase additional Limited Service MEI Ports will remain subject to the existing $100 monthly fee per port.

The Exchange also proposes to make corresponding changes to footnotes 31 and 32 in Sections 5)d)ii) and 5)d)iv) of the Fee Schedule, respectively, in light of the Exchange's proposal to delete current footnote 30. Accordingly, with the proposed changes, footnote 31 will be changed to footnote 30 and footnote 32 will be changed to footnote 31.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [19] in general, and furthers the objectives of Section 6(b)(5) of the Act [20] in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes that its proposal is consistent with the objectives of Section 6(b)(5) of the Act [21] because the proposal to remove the cap on the number of additional Limited Service MEI Ports available to Market Makers will apply equally to all Market Makers, regardless of type or size, and will allow the Exchange to offer access to its System on terms that are not unfairly discriminatory. The Exchange does not propose to change the amount of fees charged for additional Limited Service MEI Ports. The existing fee of $100 per month will apply equally to all Market Makers that choose to purchase additional Limited Service MEI Ports, which is a business decision of each Market Maker and not a requirement of the Exchange.

The Exchange believes that its proposal is consistent with the requirements under Section 6(b)(5) of the Exchange Act that the Exchange provide access on terms that are not unfairly discriminatory.[22] Including the cap on the number of additional Limited Service MEI Ports in the Fee Schedule unnecessarily burdens the Exchange from being able to adjust the connectivity and access to the Exchange's System in order to ensure that the Exchange is able to provide access [23] to Members on non-discriminatory terms and ensure sufficient capacity and headroom in the System. The Exchange constantly monitors the System's performance based on market conditions and needs to make adjustments based on customer demand. Adjusting the amount of available Limited Service MEI Ports does not change on a material basis the overall profitability of Limited Service MEI Ports. Any increase in revenue associated with adding more Limited Service MEI Ports is generally offset by the cost of purchasing and operating such new equipment and providing the services associated with Limited Service MEI Ports. When the Exchange provides fewer Limited Service MEI Ports, its overall expense is lower, but is generally offset by lower revenues associated with Limited Service MEI Ports. The Exchange's recent filing [24] to increase the number of additional Limited Service MEI Ports provides clear evidence of that fact. Accordingly, the Exchange's obligations under Section 6(b)(5) of the Act [25] and market conditions are key drivers of the System's architecture and expansion and thus the Exchange believes a cap in the Fee Schedule is not an appropriate mechanism to govern access to the Exchange.

Other exchanges, like MIAX, are required to provide access and connectivity pursuant to the same requirements under Section 6(b)(5) of the Act regardless of whether a their rules or fee schedules set forth caps on access.[26] Further, the Exchange anticipates that it will continue to expand its System and provide Market Makers and other market participants with additional access, including Limited Service MEI Ports, based on customer demand and in response to changing market conditions. The Exchange represents that any expansion or reduction in the number of additional Limited Service MEI Ports will be conducted in a similar manner that ensures fair access to its System.[27] The Exchange will also continuously assess its connectivity options and availability to ensure that they meet the needs of all market participants seeking to access the Exchange.

The Exchange believes that its proposal is consistent with Section 6(b)(4) of the Act because only Market Makers that voluntarily purchase additional Limited Service MEI Ports will be charged the existing $100 monthly fee per port, which has been unchanged since 2016.[28] The Exchange does not propose to amend the fees applicable to additional Limited Service MEI Ports, which were filed with the Commission and became effective after notice and public comment.[29] As stated above, the Exchange anticipates that in the future, it may provide more Limited Service MEI Ports due to customer demand and increased volatility in the marketplace, which will result in increased message traffic rates across the network.

The Exchange further believes its proposal is consistent with Section 6(b)(4) of the Act in that any time the

[15] *See* 15 U.S.C. 78f(b)(5).

[16] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

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

[18] *See* Securities Exchange Act Release No. 90811 (December 29, 2020), 86 FR 344 (January 5, 2021) (SR–MIAX–2020–41) (the ''Cost Analysis Filing'').

[19] 15 U.S.C. 78f(b).

[20] 15 U.S.C. 78f(b)(5).

[21] *Id.*

[22] *Id.*

[23] *Id.*

[24] *See supra* note 18.

[25] *See* 15 U.S.C. 78f(b).

[26] *Id.*

[27] *Id.*

[28] *See supra* note 11.

[29] *See supra* notes 11 and 12.

Exchange makes available more Limited Service MEI Ports, such ports that are voluntarily purchased by Market Makers will not result in the Exchange making a supracompetitive profit. The Exchange recently conducted an extensive cost review in which the Exchange analyzed every expense item in the Exchange's general expense ledger (this includes over 150 separate and distinct expense items) to determine whether each such expense relates to additional Limited Service MEI Ports, and, if such expense did so relate, what portion (or percentage) of such expense actually supports additional Limited Service MEI Ports, and thus bears a relationship that is, ''in nature and closeness,'' directly related to those services.

To provide continuity with the Exchange's most recent filing to add two additional Limited Service MEI Ports [30] and this filing, the Exchange performed this cost review anticipating that Market Makers may purchase two additional Limited Service MEI Ports.[31] The sum of all such portions of expenses represents the total cost of the Exchange to provide services associated with two additional Limited Service MEI Ports pursuant to this proposed rule change. Assuming the costs outlined in this proposal remain unchanged, the Exchange represents that the below cost and revenue analysis would continue to be true should the Exchange make additional Limited Service MEI Ports available beyond the analysis for two additional Limited Service MEI Ports discussed below.[32]

For the avoidance of doubt, none of the expenses included herein relating to the services associated with providing two additional Limited Service MEI Ports also relate to the provision of any other services offered by the Exchange. Stated differently, no expense amount of the Exchange is allocated twice. The Exchange notes that it made certain representations in a previous filing [33] regarding its expense allocation for the provision of network connectivity services. The Exchange represents that none of the expenses allocated to the provision of network connectivity services are also allocated to the provision of ports—that is, there is no overlap of any such expenses that are included in the costs associated with services the Exchange provides for connectivity and for the services the Exchange provides for ports.

Specifically, utilizing 2020 [34] expense figures, total third-party expense relating to fees paid by the Exchange to third-parties for certain products and services for the Exchange to be able to provide two additional Limited Service MEI Ports is approximately $12,537. This includes, but is not limited to, a portion of the fees paid to: (1) Equinix, for data center services, for the primary, secondary, and disaster recovery locations of the Exchange's trading system infrastructure; (2) Zayo Group Holdings, Inc. (''Zayo'') for network services (fiber and bandwidth products and services) linking the Exchange's office locations in Princeton, NJ and Miami, FL to all data center locations; (3) Secure Financial Transaction Infrastructure (''SFTI''),[35] which supports network feeds for the entire U.S. options industry; (4) various other services providers (including Thompson Reuters, NYSE, Nasdaq, and Internap), which provide content, network services, and infrastructure services for critical components of options network services; and (5) various other hardware and software providers (including Dell and Cisco, which support the production environment in which Members and non-Members connect to the network to trade, receive market data, etc.). For clarity, only a portion of all fees paid to such third-parties is included in the third-party expense herein, and no expense amount is allocated twice. Accordingly, the Exchange does not allocate its entire information technology and communication costs to the services associated with providing two additional Limited Service MEI Ports.

The Exchange believes it is reasonable to allocate such third-party expense described above towards the total cost to the Exchange to provide the services associated with two additional Limited Service MEI Ports. In particular, the Exchange believes it is reasonable to allocate the identified portion of the Equinix expense because Equinix operates the data centers (primary, secondary, and disaster recovery) that host the Exchange's network infrastructure. This includes, among other things, the necessary storage space, which continues to expand and increase in cost, power to operate the network infrastructure, and cooling apparatuses to ensure the Exchange's network infrastructure maintains stability. Without these services from Equinix, the Exchange would not be able to operate and support the network and provide the services associated with two additional Limited Service MEI Ports to its Members and non-Members and their customers. The Exchange did not allocate all of the Equinix expense toward the cost of providing the services associated with two additional Limited Service MEI Ports, only that portion which the Exchange identified as being specifically mapped to providing the services associated with two additional Limited Service MEI Ports, approximately 0.5% of the total Equinix expense. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the services associated with two additional Limited Service MEI Ports, and not any other service, as supported by its cost review.

The Exchange believes it is reasonable to allocate the identified portion of the Zayo expense because Zayo provides the internet, fiber and bandwidth connections with respect to the network, linking the Exchange with its affiliates, MIAX Pearl and MIAX Emerald, as well as the data center and disaster recovery locations. As such, all of the trade data, including the billions of messages each day per exchange, flow through Zayo's infrastructure over the Exchange's network. Without these services from Zayo, the Exchange would not be able to operate and support the network and provide the services associated with two additional Limited Service MEI Ports. The Exchange did not allocate all of the Zayo expense toward the cost of providing the services associated with two additional Limited Service MEI Ports, only the portion which the Exchange identified as being specifically mapped to providing two additional Limited Service MEI Ports, approximately 0.4% of the total Zayo expense. The Exchange believes this allocation is reasonable because it

[30] *See supra* note 18.

[31] The cost review in this proposal is based on two additional Limited Service MEI Ports because two additional Limited Service MEI Ports were purchased since the First Proposed Rule Change was submitted on April 12, 2021.

[32] As stated above, currently the number of available Limited Service MEI Ports does not change on a material basis the overall profitability of Limited Service MEI Ports; however, the Exchange represents that it will continue to monitor its costs and revenue analysis for material changes.

[33] *See* Securities Exchange Act Release No. 87875 (December 31, 2019), 85 FR 770 (January 7, 2020) (SR–MIAX–2019–51).

[34] The Exchange is utilizing year-end 2020 expenses because expenses incurred within 2021 have not yet been reviewed and full year 2021 expenses have not yet been fully projected. Therefore, the 2020 year-end expenses are the most accurate to date.

[35] In fact, on October 22, 2019, the Exchange was notified by SFTI that it is again raising its fees charged to the Exchange by approximately 11%, without having to show that such fee change complies with the Act by being reasonable, equitably allocated, and not unfairly discriminatory. It is unfathomable to the Exchange that, given the critical nature of the infrastructure services provided by SFTI, that its fees are not required to be rule-filed with the Commission pursuant to Section 19(b)(1) of the Act and Rule 19b–4 thereunder. *See* 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b–4, respectively.

represents the Exchange's actual cost to provide the services associated with two additional Limited Service MEI Ports, and not any other service, as supported by its cost review.

The Exchange believes it is reasonable to allocate the identified portions of the SFTI expense and various other service providers' (including Thompson Reuters, NYSE, Nasdaq, and Internap) expense because those entities provide connectivity and feeds for the entire U.S. options industry, as well as the content, network services, and infrastructure services for critical components of the network. Without these services from SFTI and various other service providers, the Exchange would not be able to operate and support the network and provide access to its Members and non-Members and their customers. The Exchange did not allocate all of the SFTI and other service providers' expense toward the cost of providing the services associated with two additional Limited Service MEI Ports, only the portions which the Exchange identified as being specifically mapped to providing the services associated with two additional Limited Service MEI Ports, approximately 0.5% of the total SFTI and other service providers' expense. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the services associated with two additional Limited Service MEI Ports.

The Exchange believes it is reasonable to allocate the identified portion of the other hardware and software provider expense because this includes costs for dedicated hardware licenses for switches and servers, as well as dedicated software licenses for security monitoring and reporting across the network. Without this hardware and software, the Exchange would not be able to operate and support the network and provide access to its Members and non-Members and their customers. The Exchange did not allocate all of the hardware and software provider expense toward the cost of providing the services associated with the two additional Limited Service MEI Ports, only the portions which the Exchange identified as being specifically mapped to providing the services associated with two additional Limited Service MEI Ports, approximately 0.3% of the total hardware and software provider expense. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the services associated with two additional Limited Service MEI Ports.

For 2020, total projected internal expense relating to the internal costs of the Exchange to provide the services associated with two additional Limited Service MEI Ports is approximately $91,291. This includes, but is not limited to, costs associated with: (1) Employee compensation and benefits for full-time employees that support the services associated with providing two additional Limited Service MEI Ports, including staff in network operations, trading operations, development, system operations, business, as well as staff in general corporate departments (such as legal, regulatory, and finance) that support those employees and functions (including an increase as a result of the higher determinism project); (2) depreciation and amortization of hardware and software used to provide the services associated with two additional Limited Service MEI Ports, including equipment, servers, cabling, purchased software and internally developed software used in the production environment to support the network for trading; and (3) occupancy costs for leased office space for staff that provide the services associated with two additional Limited Service MEI Ports. The breakdown of these costs is more fully-described below. For clarity, only a portion of all such internal expenses are included in the internal expense herein, and no expense amount is allocated twice. Accordingly, the Exchange does not allocate its entire costs contained in those items to the services associated with providing two additional Limited Service MEI Ports.

The Exchange believes it is reasonable to allocate such internal expense described above towards the total cost to the Exchange to provide the services associated with two additional Limited Service MEI Ports. In particular, the Exchange's employee compensation and benefits expense relating to providing the services associated with two additional Limited Service MEI Ports is approximately $65,434, which is only a portion of the $10,905,680 total projected expense for employee compensation and benefits. The Exchange believes it is reasonable to allocate the identified portion of such expense because this includes the time spent by employees of several departments, including Technology, Back Office, Systems Operations, Networking, Business Strategy Development (who create the business requirement documents that the Technology staff use to develop network features and enhancements), Trade Operations, Finance (who provide billing and accounting services relating to the network), and Legal (who provide legal services relating to the network, such as rule filings and various license agreements and other contracts). As part of the extensive cost review conducted by the Exchange, the Exchange reviewed the amount of time spent by each employee on matters relating to the provision of services associated with two additional Limited Service MEI Ports. Without these employees, the Exchange would not be able to provide the services associated with two additional Limited Service MEI Ports to its Members and non-Members and their customers. The Exchange did not allocate all of the employee compensation and benefits expense toward the cost of the services associated with providing two additional Limited Service MEI Ports, only the portions which the Exchange identified as being specifically mapped to providing the services associated with two additional Limited Service MEI Ports, approximately 0.6% of the total employee compensation and benefits expense. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the services associated with two additional Limited Service MEI Ports, and not any other service, as supported by its cost review.

The Exchange's depreciation and amortization expense relating to providing the services associated with two additional Limited Service MEI Ports is approximately $23,937, which is only a portion of the $4,787,419 total projected expense for depreciation and amortization. The Exchange believes it is reasonable to allocate the identified portion of such expense because such expense includes the actual cost of the computer equipment, such as dedicated servers, computers, laptops, monitors, information security appliances and storage, and network switching infrastructure equipment, including switches and taps that were purchased to operate and support the network and provide the services associated with two additional Limited Service MEI Ports. Without this equipment, the Exchange would not be able to operate the network and provide the services associated with two additional Limited Service MEI Ports to its Members and non-Members and their customers. The Exchange did not allocate all of the depreciation and amortization expense toward the cost of providing the services associated with two additional Limited Service MEI Ports, only the portion which the Exchange identified as being specifically mapped to providing the services associated with the two additional Limited Service MEI Ports, approximately 0.5% of the total depreciation and amortization expense, as these services would not be possible without relying on such equipment. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide the services associated with two additional Limited Service MEI Ports, and not any other service, as supported by its cost review.

The Exchange's occupancy expense relating to providing the services associated with providing two additional Limited Service MEI Ports is approximately $1,920, which is only a portion of the $480,036 total projected expense for occupancy. The Exchange believes it is reasonable to allocate the identified portion of such expense because such expense represents the portion of the Exchange's cost to rent and maintain a physical location for the Exchange's staff who operate and support the network, including providing the services associated with two additional Limited Service MEI Ports. This amount consists primarily of rent for the Exchange's Princeton, NJ office, as well as various related costs, such as physical security, property management fees, property taxes, and utilities. The Exchange operates its Network Operations Center (''NOC'') and Security Operations Center (''SOC'') from its Princeton, New Jersey office location. A centralized office space is required to house the staff that operates and supports the network. The Exchange currently has approximately 160 employees. Approximately two-thirds of the Exchange's staff are in the Technology department, and the majority of those staff have some role in the operation and performance of the services associated with providing additional Limited Service MEI Ports. Without this office space, the Exchange would not be able to operate and support the network and provide the services associated with two additional Limited Service MEI Ports to its Members and non-Members and their customers. Accordingly, the Exchange believes it is reasonable to allocate the identified portion of its occupancy expense because such amount represents the Exchange's actual cost to house the equipment and personnel who operate and support the Exchange's network infrastructure and the services associated with two additional Limited Service MEI Ports. The Exchange did not allocate all of the occupancy expense toward the cost of providing the services associated with two additional Limited Service MEI Ports, only the portion which the Exchange identified as being specifically mapped to operating and supporting the network, approximately 0.4% of the total occupancy expense. The Exchange believes this allocation is reasonable because it represents the Exchange's cost to provide the services associated with two additional Limited Service MEI Ports, and not any other service, as supported by its cost review. Accordingly, based on the facts and circumstances presented, the Exchange believes that its provision of the services associated with two additional Limited Service MEI Ports will not result in excessive pricing or supra-competitive profit.

The Exchange believes it is reasonable, equitable and not unfairly discriminatory to allocate the respective percentages of each expense category described above towards the total cost to the Exchange of operating and supporting the network, including providing the services associated with two additional Limited Service MEI Ports because the Exchange performed a line-by-line item analysis of all the expenses of the Exchange, and has determined the expenses that directly relate to operation and support of the network. Further, the Exchange notes that, without the specific third-party and internal items listed above, the Exchange would not be able to operate and support the network, including providing the services associated with two additional Limited Service MEI Ports to its Members and non-Members and their customers. Each of these expense items, including physical hardware, software, employee compensation and benefits, occupancy costs, and the depreciation and amortization of equipment, have been identified through a line-by-line item analysis to be integral to the operation and support of the network.

To provide continuity with the Exchange's most recent filing to add two additional Limited Service MEI Ports [36] and this filing, the Exchange is basing its projected revenue from additional Limited Service MEI Ports that may be purchased by Market Makers as though seven Market Makers purchased two additional Limited Service MEI Ports each. The Exchange notes that any time it needs to expand its network by making available two additional Limit Service MEI Ports due to increased customer demand and increased volatility in the marketplace, which translates into increased message traffic rates across the network, there is an initial build out cost. The cost to expand the network in this manner is greater than the revenue the Exchange anticipates the additional Limited Service MEI Ports will generate. Specifically, the Exchange estimates it will incur a one-time cost of approximately $175,000 in capital expenditures (''CapEx'') on hardware, software, and other items to expand the network to make available two additional Limited Service MEI Ports. This estimated cost also includes expense associated with providing the necessary engineering and support personnel to transition those Market Makers who wish to acquire two additional Limited Service MEI Ports. Further, the Exchange projects that the annualized revenue from the two additional Limited Service MEI Ports will be approximately $16,800 (assuming seven Market Makers purchase the two additional Limited Service MEI Ports). Therefore, the Exchange's upfront cost in expanding its network to provide its Members with two additional Limited Service MEI Ports—approximately $175,000—is significant relative to the anticipated annualized revenue the Exchange expects to bring in from two additional Limited Service MEI Ports—approximately $16,800. Further, the Exchange anticipates it will incur approximately $103,828 in annualized ongoing operating expense (''OpEx'') in order to support the expanded network and two additional Limited Service MEI Ports. Thus, even excluding the upfront CapEx of $175,000, the Exchange is not generating a supra-competitive profit from the provision of two additional Limited Service MEI Ports. In fact, even excluding the one-time CapEx cost of $175,000, the Exchange anticipates generating an annual loss from the provision of two additional Limited Service MEI Ports of ($87,028)—that is, $16,800 in revenue minus $103,828 in expense equates to a loss of ($87,028) to support the additional ports annually.

The Exchange also notes that no other exchange has a similar cap on the amount of ports that firms can purchase in their rulebooks or fee schedules and those exchanges have the same requirements under Section 6(b)(5) of the Exchange Act [37] as MIAX.[38]

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The proposed rule change will not impose a burden on competition but

[36] *See supra* note 18.

[37] 15 U.S.C. 78f(b)(5).

[38] *See supra* note 14.

will benefit competition by enhancing the Exchange's ability to compete by providing additional services to market participants. It is not intended to address a competitive issue. Rather, the proposal is intended to allow the Exchange to increase its inventory of MEI Ports to meet increased Member demand and increased message traffic resulting from greater marketplace volatility. The Exchange also does not believe that the proposed rule change will impose a burden on intramarket competition because additional Limited Service MEI Ports are available to all Market Makers on an equal basis. It is a business decision of each Market Maker whether to pay for the additional Limited Service MEI Ports.

*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,[39] and Rule 19b–4(f)(2)[40] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MIAX–2021–19 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–MIAX–2021–19. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MIAX–2021–19 and should be submitted on or before June 8, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[41]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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[39] 15 U.S.C. 78s(b)(3)(A)(ii).

[40] 17 CFR 240.19b–4(f)(2).

[41] 17 CFR 200.30–3(a)(12).

**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34–91863; File No. SR–NYSENAT–2021–13]**

**Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Continue Offering Certain Connectivity Services That Have Been Suspended by the Securities and Exchange Commission**

May 12, 2021.

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 May 7, 2021, NYSE National, Inc. (''NYSE National'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II 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 proposes to continue offering certain connectivity services that have been suspended by the Securities and Exchange Commission (''Commission'') at no charge, for a period of 14 days, in order to provide affected Users time to acquire substitute services before their connectivity is terminated. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, 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 self-regulatory organization 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 those 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 parts of such statements.

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

[2] 17 CFR 240.19b–4.