registration and disciplinary history to investors at no charge.[16]

B. Proposed Amendments to Rule 8312

The proposed rule change would amend Rule 8312 to release information on BrokerCheck as to whether a particular member firm or former member firm is currently designated as a Restricted Firm pursuant to Rules 4111 and 9561. Information that a firm is currently a Restricted Firm would be displayed in BrokerCheck on both a firm's summary report and detailed report. Specifically, those reports would include the text, ''This firm is currently designated as a Restricted Firm pursuant to FINRA Rule 4111 (Restricted Firm Obligations),'' in a color or font that is prominent. The alert also would include the text ''Click here for more information,'' with a hyperlink to a page on FINRA's website that provides for the investing public a clear explanation of Rule 4111 and what it means to be a Restricted Firm.[17]

Information that a firm is a Restricted Firm would display on BrokerCheck while that firm is designated as a Restricted Firm. This Restricted Firm status would remain displayed while a Rule 9561 expedited proceeding to review the Department's decision is pending since the decision that designates a firm as a Restricted Firm will not be stayed during a Rule 9561 expedited proceeding.[18] When a firm is no longer designated as a Restricted Firm, no historical information would be displayed on BrokerCheck that the firm was a Restricted Firm.[19]

III. Proceedings To Determine Whether To Approve or Disapprove File No. SR–FINRA–2022–015 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act to determine whether the proposed rule change should be approved or disapproved.[20] Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Exchange Act, the Commission is providing notice of the grounds for disapproval under consideration.[21] The Commission is instituting proceedings to allow for additional analysis and input concerning whether the proposed rule change is consistent with the Exchange Act and the rules thereunder.

IV. Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposed rule change. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change is consistent with the Exchange Act and the rules thereunder.

Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[22]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by October 12, 2022. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by October 26, 2022.

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 No. SR–FINRA–2022–015 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 No. SR–FINRA–2022–015. 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 such filing also will be available for inspection and copying at the principal office of FINRA. 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 No. SR–FINRA–2022–015 and should be submitted on or before October 12, 2022. If comments are received, any rebuttal comments should be submitted on or before October 26, 2022.

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

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–20376 Filed 9–20–22; 8:45 am]

BILLING CODE 8011–01–P

[16] *See id.* at 36552.

[17] *See id.* at 36522. This would be similar to how BrokerCheck displays information that a firm is a ''taping firm.'' *See id.* at note 19.

[18] *See* Notice, 87 FR at 36552; *see also* Rule 9561(a)(4) (Effectiveness of the Rule 4111 Requirements).

[19] *See* Notice, 87 FR at 36552.

[20] 15 U.S.C. 78s(b)(2)(B).

[21] *Id.*

[22] Section 19(b)(2) of the Exchange Act, as amended by the Securities Acts Amendments of 1975, Public Law 94–29, 89 Stat. 97 (1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[23] 17 CFR 200.30–3(a)(12); 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95780; File No. SR–PEARL–2022–39]

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

September 15, 2022.

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 September 12, 2022, MIAX PEARL, LLC (''MIAX Pearl'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange is filing a proposal to amend the MIAX Pearl Options Fee Schedule (the ''Fee Schedule'') to amend its monthly Trading Permit [3] fees for Members.[4]

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

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the 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 amend the Fee Schedule to amend the amount and calculation of the monthly Trading Permit fees for Members. Currently, the Exchange assesses Trading Permit fees based upon the monthly total volume executed by the Member and its Affiliates [5] on the Exchange across all origin types, not including Excluded Contracts,[6] as compared to the Total Consolidated Volume (''TCV'') [7] in all MIAX Pearl-listed options. This Trading Permit fee structure has been in place since 2018.[8] The Exchange adopted a tier-based fee structure based upon the volume-based tiers detailed in the definition of ''Non-Transaction Fees Volume-Based Tiers'' [9] in the Definitions section of the Fee Schedule. The Exchange also assesses Trading Permit fees based upon the type of interface used by the Member to connect to the Exchange—the FIX Interface [10] and/or the MEO Interface.[11]

The Exchange now proposes to amend the calculation and amount of Trading Permit fees for Members by moving away from a volume tier-based fee structure for Electronic Exchange Members [12] (''EEMs'') to harmonize the tier-based structure for Market Maker [13] with that of its affiliates, Miami International Securities Exchange, LLC (''MIAX'') and MIAX Emerald, LLC (''MIAX Emerald''). Specifically, the Exchange proposes to adopt a flat monthly Trading Permit fee for EEMs that connect through either the FIX and/or MEO Interface and to adopt a tiered Trading Permit fee structure for Market Makers. Each of these changes are described below.

EEM Trading Permit Fees

First, the Exchange proposes to move away from a volume tier-based fee structure for EEM Trading Permit fees and charge EEMs (other than Clearing Firms) a flat monthly Trading Fee for connecting through the FIX Interface and/or MEO Interface.

All Members are able to use either interface based on their business models and needs. The FIX Interface is the industry-wide uniform message format and provides lower bandwidth, less capacity, and fewer Exchange resources. EEMs who are primarily order flow providers, are the only users of the FIX Interface.[14] The MEO Interface is the more robust interface offering lower

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

[2] 17 CFR 240.19b–4.

[3] The term ''Trading Permit'' means a permit issued by the Exchange that confers the ability to transact on the Exchange. *See* 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* Exchange Rule 100 and the Definitions Section of the Fee Schedule.

[5] ''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.

[6] ''Excluded Contracts'' means any contracts routed to an away market for execution. *See* the Definitions Section of the Fee Schedule.

[7] ''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 of time in which the Exchange experiences an Exchange System Disruption (solely in the option classes of the affected Matching Engine). *See* the Definitions Section of the Fee Schedule.

[8] *See* Securities Exchange Act Release No. 82867 (March 13, 2018), 83 FR 12044 (March 19, 2018) (SR–PEARL–2018–07).

[9] *See* the Definitions Section of the Fee Schedule for the monthly volume thresholds associated with each Tier.

[10] ''FIX Interface'' means the Financial Information Exchange interface for certain order types as set forth in Exchange Rule 516. *See* the Definitions Section of the Fee Schedule and Exchange Rule 100.

[11] ''MEO Interface'' or ''MEO'' means a binary order interface for certain order types as set forth in Rule 516 into the MIAX Pearl System. *See* the Definitions Section of the Fee Schedule and Exchange Rule 100.

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

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

[14] The Exchange does not propose to amend the fees for EEM Clearing Firms, which is set at $250 per month and not based on the amount of volume conducted on the Exchange. The term ''EEM Clearing Firm'' means an EEM that solely clears transactions on the Exchange and does not connect to the Exchange via either the FIX Interface or MEO Interface. *See* the Definitions Section of the Fee Schedule.

latency and higher throughput. The Exchange offers three time-in-force modifiers: [15] Day Limit (''Day''), Immediate-Or-Cancel (''IOC''), and Good 'Til Cancelled (''GTC'').[16] While all order types are available for use on either interface, only the time-in-force modifiers of IOC and Day are available on the MEO Interface.[17] The MEO Interface allows the submission of Cancel-Replacement orders,[18] which allow for the immediate cancellation of a previously received order and the replacement of that order with a new order with new terms and conditions.[19]

Specifically, the Exchange proposes to assess a flat monthly fee of $1,000 for EEMs that connect through the FIX Interface and a flat monthly fee of $3,000 for EEMs that connect through the MEO Interface. The Exchange proposes to charge a higher fee for EEMs that elect to use the MEO Interface due to it being the more robust interface offering lower latency and higher throughput. The Exchange also proposes to provide an EEM that chooses the MEO Interface Trading Permit with access to the FIX Interface at no additional cost. The Exchange does not propose to amend the Trading Permit fee for EEM Clearing Firms, which will remain at $250 per month.[20]

Market Makers only use the MEO Interface because it provides functionality that is necessary for Market Makers in satisfying their market making obligations.

Market Maker Trading Permit Fees

The Exchange proposes to amend the calculation and amounts of monthly Trading Permit fees for Market Makers to harmonize its fee structure with that of its affiliates, MIAX and MIAX Emerald.[21] The Exchange also notes that this proposal is substantially based on the recent filing by BOX Exchange LLC (''BOX'') to adopt monthly ''Participant'' fees for BOX's market makers based on options classes assigned, which filing has since passed the 60-day suspension deadline.[22]

The amount of the monthly Trading Permit fees for Market Makers would be based on the lesser of either the per class traded or percentage of total national average daily volume (''ADV'') measurement based on classes traded by volume. The amount of monthly Market Maker Trading Permit fee would be based upon the number of classes in which the Market Maker was registered to quote on any given day within the calendar month, or upon the class volume percentages.

Specifically, the Exchange proposes to adopt the following Trading Permit fees for Market Makers: (i) $3,000 for Market Maker registrations in up to 10 option classes or up to 20% of option classes by national ADV; (ii) $5,000 for Market Maker registrations in up to 40 option classes or up to 35% of option classes by ADV; (iii) $7,000 for Market Maker registrations in up to 100 option classes or up to 50% of option classes by ADV; and (iv) $9,000 for Market Maker registrations in over 100 option classes or over 50% of option classes by ADV up to all option classes listed on MIAX Pearl. For example, if Market Maker 1 elects to quote the top 40 option classes which consist of 58% of the total national average daily volume in the prior calendar quarter, the Exchange would assess $5,000 to Market Maker 1 for the month which is the lesser of 'up to 40 classes' and 'over 50% of classes by volume up to all classes listed on MIAX Pearl'. If Market Maker 2 elects to quote the bottom 1000 option classes which consist of 10% of the total national average daily volume in the prior quarter, the Exchange would assess $3,000 to Market Maker 2 for the month which is the lesser of 'over 100 classes' and 'up to 20% of classes by volume.'

A Market Maker is determined to be registered in a class if that Market Maker has been registered in one or more series in that class. The Exchange will assess MIAX Pearl Market Makers the monthly Market Maker Trading Permit fee based on the greatest number of classes listed on MIAX Pearl that the MIAX Pearl Market Maker registered to quote in on any given day within a calendar month. The class volume percentage is based on the total national ADV in classes listed on MIAX Pearl in the prior calendar quarter. Newly listed option classes are excluded from the calculation of the monthly Market Maker Trading Permit fee until the calendar quarter following their listing, at which time the newly listed option classes will be included in both the per class count and the percentage of total national ADV.

The Exchange also proposes to adopt an alternative lower Trading Permit fee for Market Makers who fall within the 2nd, 3rd and 4th levels of the Market Maker Trading Permit fee table: (i) Market Maker registrations in up to 40 option classes or up to 35% of option classes by volume; (ii) Market Maker registrations in up to 100 option classes or up to 50% of option classes by volume; and (iii) Market Maker registrations in over 100 option classes or over 50% of option classes by volume up to all option classes listed on MIAX Pearl. In particular, the Exchange proposes to adopt footnote ''**'' following the Market Maker Trading Permit fee table for these Monthly Trading Permit tier levels, if the Market Maker's total monthly executed volume during the relevant month is less than 0.040% of the total monthly TCV for MIAX Pearl-listed option classes for that month, then the fee will be $3,500 instead of the fee otherwise applicable to such level.

The purpose of the alternative lower fee designated in proposed footnote ''**'' is to provide a lower fixed cost to those Market Makers who are willing to quote the entire Exchange market (or substantial amount of the Exchange market), as objectively measured by either number of classes assigned or national ADV, but who do not otherwise execute a significant amount of volume on the Exchange. The Exchange believes that, by offering lower fixed costs to Market Makers that execute less volume, the Exchange will retain and attract smaller-scale Market Makers, which are an integral component of the option marketplace, but have been decreasing in number in recent years, due to industry consolidation and lower market maker profitability. Since these smaller-scale Market Makers utilize less Exchange capacity due to lower overall volume executed, the Exchange believes it is reasonable and equitable to offer such Market Makers a lower fixed cost. The Exchange notes that the Exchange's affiliates, MIAX and MIAX Emerald, provide similar alternative lower Trading Permit fees for Market Makers who quote the entire MIAX and MIAX Emerald markets (or substantial amount of those markets), as objectively measured by either number of classes assigned or national ADV, but who do

[15] *See* MIAX Pearl Options Exchange User Manual, Section 6, Order Types, *available at https://www.miaxoptions.com/exchange-functionality/pearl* (last visited June 30, 2022).

[16] *See, e.g.,* Exchange Rule 516.

[17] *See* preamble to Exchange Rule 516 (noting that not all order types and modifiers are available for use on each of the MEO Interface and the FIX Interface). *See also* Section 4.1.1.2 of the MEO Interface Specification, *available at https://www.miaxoptions.com/sites/default/files/page-files/MIAX_Express_Orders_MEO_v2.0.pdf* (indicating that the time-in-force instructions of IOC and Day are available on the MEO interface).

[18] *See* MIAX Pearl Options Exchange User Manual, Section 6, Interfaces and Liquidity Types, *available at https://www.miaxoptions.com/exchange-functionality/pearl* (last visited May 16, 2022).

[19] *See* Exchange Rule 516(d).

[20] The term ''EEM Clearing Firm'' means an EEM that solely clears transactions on the Exchange and does not connect to the Exchange via either the FIX Interface or MEO Interface. *See* the Definitions Section of the Fee Schedule.

[21] *See* MIAX Fee Schedule, Section (3)(b) and MIAX Emerald Fee Schedule, Section (3)(b).

[22] *See* Securities Exchange Act Release No. 94894 (May 11, 2022), 87 FR 29987 (May 17, 2022) (SR–BOX–2022–17).

not otherwise execute a significant amount of volume on MIAX or MIAX Emerald.[23] The Exchange also notes that other options exchanges assess certain of their membership fees at different rates, based upon a member's participation on that exchange (as described in the table below), and, as such, this concept is not new or novel. The proposed changes to the Trading Permit fees for Market Makers who fall within the 2nd, 3rd and 4th levels of the fee table are based upon a business determination of current Market Maker assignments and trading volume.

* * * * *

As illustrated by the table below, the Exchange notes that the proposed fees for the Exchange's Trading Permits are in line with, or cheaper than, the similar trading permit and membership fees charged by other options exchanges. The Exchange believes other exchanges' membership and trading permit fees are useful examples of alternative approaches to providing and charging for membership and provides the table for comparison purposes only to show how the Exchange's proposed fees compare to fees currently charged by other options exchanges for similar membership and trading permits.

Exchange	Monthly membership/trading permit fee
MIAX Pearl Options (as proposed)	EEM Trading Permit fees: $1,000 for EEMs that connect via the FIX Interface. $3,000 for EEMs that connect via the MEO Interface. Market Maker Trading Permit fees: —$3,000 for Market Maker Assignments in up to 10 option classes or up to 20% of option classes by national ADV. —$5,000 for Market Maker Assignments in up to 40 option classes or up to 35% of option classes by ADV. —$7,000 for Market Maker Assignments in up to 100 option classes or up to 50% of option classes by ADV. —$9,000 for Market Maker Assignments in over 100 option classes or over 50% of option classes by ADV up to all option classes listed on MIAX Pearl.
BOX Options Exchange LLC ("BOX")[24].	Participant Fee: $1,500. Electronic Market Maker Trading Permit Fees: Tier 1 (up to and including 10 classes): $4,000. Tier 2 (up to and including 40 classes): $6,000. Tier 3 (up to and including 100 classes): $8,000. Tier 4 (over 100 classes): $10,000.
NYSE Arca, Inc. ("NYSE Arca")[25]	Options Trading Permits: Office and Clearing Firms: $1,000. Market Makers: 1st OTP—$8,000 for up to 60 plus the bottom 45% of option issues. 2nd OTP—Additional $6,000 for up to 150 plus the bottom 45% of option issues. 3rd OTP—Additional $5,000 for up to 500 plus the bottom 45% of option issues. 4th OTP—Additional $4,000 for up to 1,100 plus the bottom 45% of option issues. 5th OTP—Additional $3,000 for all option issues. 6th–9th OTP—Additional $2,000. 10th or more OTPs—$500 for all options issues.
NYSE American, LLC ("NYSE American")[26].	ATP Trading Permits: Clearing Member: $1,000. Order Flow Provider: $1,000. Market Makers: $8,000 for up to 60 plus the bottom 45% of option issues. Additional $6,000 for up to 150 plus the bottom 45% of option issues. Additional $5,000 for up to 500 plus the bottom 45% of option issues. Additional $4,000 for up to 1,100 plus the bottom 45% of option issues. Additional $3,000 for all option issues. Additional $2,000 for 6th to 9th ATPs (plus additional fee for premium products). Additional $500 for the 10th or more ATPs.
Nasdaq PHLX LLC ("Nasdaq PHLX")[27].	Streaming Quote Trader ("SQT") permit fees: Tier 1 (up to 200 option classes): $0.00. Tier 2 (up to 400 option classes): $2,200. Tier 3 (up to 600 option classes): $3,200. Tier 4 (up to 800 option classes): $4,200. Tier 5 (up to 1,000 option classes): $5,200. Tier 6 (up to 1,200 option classes): $6,200. Tier 7 (all option classes): $7,200. Remote Market Maker Organization ("RMMO") permit fees: Tier 1 (less than 100 option classes): $5,000. Tier 2 (more than 100 and less than 999 option classes): $8,000. Tier 3 (1,000 or more option classes): $11,000.
Nasdaq ISE LLC ("Nasdaq ISE")[28]	Access Fees: Electronic Access Members ("EAMs"): $500. Primary Market Maker: $5,000 per membership. Competitive Market Maker: $2,500 per membership.
Cboe Exchange, Inc. ("Cboe")[29] ...	Electronic Trading Permit Fees: Market Maker: $5,000. Electronic Access Permit: $3,000. Clearing TPH Permit: $2,000.

[23] *See* MIAX Fee Schedule, Section (3)(b) and MIAX Emerald Fee Schedule, Section (3)(b).

Exchange	Monthly membership/trading permit fee
Cboe C2 Exchange, Inc. (''Cboe C2'') [30].	Access Permit Fees for Market Makers: $5,000. Electronic Access Permits: $1,000.
Cboe BZX Exchange, Inc. (''Cboe BZX Options'') [31].	$500 where member has an ADV < 5,000 contracts traded [32]. $1,000 where member has an ADV ≥ 5,000 contracts traded.

The proposed rule change is immediately effective.

[24] *See* BOX fee schedule, Section 1, *available at https://boxexchange.com/assets/BOX-Fee-Schedule-as-of-June-1-2022-1.pdf* (last visited June 29, 2022). BOX's Participant Fee is the analog to the Exchange's Trading Permit fee for Members who use the FIX interface. BOX's Electronic Market Maker Trading Permit fee is the analog for the Exchange's Trading Permit fee for Members who use the MEO interface. BOX had an average daily market share of 7.36% for the month of August 2022, as of August 31, 2022. *See* Market at a Glance, *available at https://www.miaxoptions.com/* (last visited August 31, 2022).

[25] *See* NYSE Arca Options Fees and Charges, OTP Trading Participant Rights, p.1, *available at https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf* (last visited July 12, 2022). NYSE Arca recently increased this Options Trading Permit Fees approximately 45%. *See* Securities Exchange Act Release No. 95142 (June 23, 2022), 87 FR 38786 (June 29, 2022) (SR–NYSEArca–2022–36). Under the new fee structure, it effectively costs a Market Maker $26,000 per month to trade all options issues on NYSE Arca. NYSE Arca's Options Trading Permit fee is the analog to the Exchange's Trading Permit fee for Members who use the FIX interface. NYSE Arca's Options Trading Permit fee for Market Makers is the analog for the Exchange's Trading Permit fee for Members who use the MEO interface.

[26] *See* NYSE American Options Fee Schedule, Section III, Monthly Trading Permit, Rights, Floor Access and Premium Product Fees, p. 23–24, *available at https://www.nyse.com/publicdocs/nyse/markets/american-options/NYSE_American_Options_Fee_Schedule.pdf* (last visited August 31, 2022). Under this fee structure, it effectively costs a Market Maker $26,000 per month to trade all options issues on NYSE American. NYSE American's ATP Trading Permit fee for Clearing Members and Order Flow Providers is the analog for the Exchange's Trading Permit fee for Members that use the FIX interface. NYSE American's ATP Trading Permit fee for Market Makers is the analog for the Exchange's Trading Permit fee for Members that use the MEO interface.

[27] *See* Nasdaq PHLX Options 7 Pricing Schedule, Section 8. Membership Fees, *available at https://listingcenter.nasdaq.com/rulebook/phlx/rules/Phlx%20Options%207* (last visited August 31, 2022). Nasdaq PHLX Options' SQT and RMMO fees is the analog to the Exchange's Trading Permit fee for Members that use the MEO Interface.

[28] *See* Nasdaq ISE Options 7 Pricing Schedule, Section 8.A. Access Services, *available at https://listingcenter.nasdaq.com/rulebook/ise/rules/ISE%20Options%207* (last visited August 31, 2022). Nasdaq ISE Options' EAM Access Fee is the analog to the Exchange's Trading Permit fee for Members that use the FIX Interface. Nasdaq ISE Options' Primary and Competitive Market Maker Access Fees are the analog to the Exchange's Trading Permit fee for Members that use the MEO Interface.

[29] *See* Cboe Fee Schedule, Electronic Trading Permit Fees, *available at https://cdn.cboe.com/resources/membership/Cboe_FeeSchedule.pdf* (last visited August 31, 2022). Cboe's Electronic Access Permit fee and Clearing TPH fee are the analog to the Exchange's Trading Permit fee for Members that use the FIX Interface. Cboe's Market Maker Permit fee is the analog to the Exchange's Trading Permit fee for Members that use the MEO Interface.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act, in general, and Section 6(b)(4) and 6(b)(5) of the Act,[33] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among Exchange Members and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange commenced operations in February 2017 [34] and adopted its initial fee schedule that waived fees for Trading Permits to trade on the Exchange.[35] Although trading permit fees were waived, an initial fee structure was put in place to communicate the Exchange's intent to charge trading permit fees in the future. As a new exchange entrant, the Exchange chose to offer Trading Permits free of charge to encourage market participants to trade on the Exchange and experience, among things, the quality of the Exchange's technology and trading functionality. This practice is not uncommon. New exchanges often do not charge fees or charge lower fees for certain services such as memberships/trading permits to attract order flow to an exchange, and later amend their fees to reflect the true value of those services, absorbing all costs to provide those services in the meantime. Allowing new exchange entrants time to build and sustain market share through various pricing incentives before increasing non-transaction fees encourages market entry and promotes competition. It also enables new exchanges to mature their markets and allow market participants to trade on the new exchanges without fees serving as a potential barrier to attracting memberships and order flow.[36]

Later in 2018, as the Exchange's market share increased,[37] the Exchange adopted nominal fees for Trading Permits along with a tiered-volume based fee credit, known as the Trading Permit Fee Credit, and a Monthly

[30] *See* Cboe C2 Fee Schedule, Access Fees, *available at https://www.cboe.com/us/options/membership/fee_schedule/ctwo/* (last visited August 31, 2022). C2's Market Maker Access Permit fee is the analog to the Exchange's Trading Permit fee for Members that use the MEO Interface. C2's Electronic Access Permit fee is the analog to the Exchange's Trading Permit fee for Members that use the FIX Interface.

[31] *See* ''Membership Fees'' section of the Cboe BZX Options Fee Schedule, *available at https://www.cboe.com/us/options/membership/fee_schedule/bzx* (last visited August 31, 2022). The Exchange understands Cboe BZX Options charges the same Membership Fee to all of its Options Members.

[32] Under the Exchange's tiered structure, a Member may trade approximately 106,000 more contracts on the Exchange than on Cboe BZX Options and continue to qualify for the Exchange's lowest tier. For example, a Member would qualify for Tier 1 of the Exchange's tiered pricing structure where that Member's total volume as a percentage of TCV is between 0.00% and 0.30%. Assuming an average of 37 million contracts are traded each day during a month, that Member would qualify for Tier 1 where that Member traded less than 111,000 contracts that day and be charged $500, the same fee as Cboe BZX Options, where that Member connects via the FIX Interface. On Cboe BZX Options, the Exchange understands that same member would no longer qualify for their lowest tier when their ADV equals or exceeds 5,000 contracts and be charged a fee of $1,000 for that month.

[33] 15 U.S.C. 78f(b)(4) and (5).

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

[35] *See* Securities Exchange Act Release No. 80061 (February 17, 2017), 82 FR 11676 (February 24, 2017) (SR–PEARL–2017–10).

[36] *See* Securities Exchange Act Release No. 94894 (May 11, 2022), 87 FR 29987 (May 17, 2022) (SR–BOX–2022–17) (stating, ''[t]he Exchange established this lower (when compared to other options exchanges in the industry) Participant Fee in order to encourage market participants to become Participants of BOX. . .''). *See also* Securities Exchange Act Release No. 90076 (October 2, 2020), 85 FR 63620 (October 8, 2020) (SR–MEMX–2020–10) (''MEMX Membership Fee Proposal'') (proposing to adopt the initial fee schedule and stating that ''[u]nder the initial proposed Fee Schedule, the Exchange proposes to make clear that it does not charge any fees for membership, market data products, physical connectivity or application sessions.''). MEMX has seen its market share increase and recently proposed to adopt a membership fee and fees for connectivity. *See* Securities Exchange Act Release Nos. 93927 (January 7, 2022), 87 FR 2191 (January 13, 2022) (SR–MEMX–2021–19) (proposing to adopt membership fees); *and* 95299 (July 15, 2022), 87 FR 43563 (July 21, 2022) (SR–MEMX–2022–17) (proposing to adopt fees for connectivity). *See also, e.g.,* Securities Exchange Act Release No. 88211 (February 14, 2020), 85 FR 9847 (February 20, 2020) (SR–NYSENAT–2020–05), *available at https://www.nyse.com/publicdocs/nyse/markets/nyse-national/rule-filings/filings/2020/SR-NYSENat-2020-05.pdf* (initiating market data fees for the NYSE National exchange after initially setting such fees at zero).

[37] The Exchange experienced a monthly average trading volume of 3.94% for the month of March 2018. *See* Market at a Glance, *available at www.miaxoptions.com* (last visited (August 31, 2022).

Volume Credit.[38] At that time, the Exchange chose to adopt a volume tier-based fee for Trading Permits along with the type of interface used—FIX or MEO—as a way to provide different choices regarding how potential Members could access the Exchange's System. This was for business and competitive reasons and to provide choice regarding Trading Permits and membership that had not previously existed. The Exchange now proposes to move away from the volume tier-based Trading Permit fee structure and align its Trading Permit fees with its affiliates, MIAX and MIAX Emerald, as well as other options exchanges by assessing Market Makers Trading Permit fees based on options classes assigned and assessing EEMs a flat monthly Trading Permit fee based on interface used.

The Exchange recently reviewed its current Trading Permit fees. In its review, the Exchange determined that the calculation and amount of Trading Permit fees would need to be amended, and volume tier-based Trading Permit fees for all Member types is no longer appropriate. Specifically, the Exchange found that Market Makers and EEMs using the MEO Interface were benefitting from lower MEO Interface Trading Permit fees while (1) consuming the most bandwidth and resources of the network; (2) transacting the vast majority of the volume on the Exchange; and (3) requiring the high touch network support services provided by the Exchange and its staff. The Exchange notes that Broker Dealers, Professional Customers, and Priority Customers [39] that use the FIX Interface take up significantly less Exchange resources and costs. Further, the Exchange notes that Market Makers and EEMs using the MEO Interface account for greater than 99% of message traffic over the network, while other non-Market Maker market participants account for less than 1% of message traffic over the network. In the Exchange's experience, most Exchange Members do not have a business need for the high performance MEO Interface required by Market Makers. The Exchange's high performance MEO Interface (including employee support for such interface), provides unparalleled system throughput and the capacity to handle 10.8 million quotes per second and average round trip latency rate of approximately 30.76 microseconds for a single quote. Over the period from March 2022 through May 2022, the Exchange processed 1.3 billion messages via the FIX Interface (0.33% of total messages received). Over that same time period, the Exchange processed 386.1 billion messages (99.67% of total messages received) over the MEO Interface, almost entirely from Market Maker message traffic (which equals approximately 6 billion messages per day over that time period) (386.1 billion messages divided 64 trading days from March through May 2022).

Additionally, in order to achieve consistent, premium quote and order throughput performance, the Exchange must build out and maintain an MEO infrastructure that has the capacity to handle the message rate requirements beyond those billions of daily messages. These billions of messages per day consume the Exchange's resources and significantly contribute to the overall expense for quote and MEO order storage and MEO throughput capabilities. Given this difference in utilization rate, the Exchange believes that it is reasonable, equitable, and not unfairly discriminatory that Market Makers and EEMs using the MEO Interface begin to pay for a higher portion of the system costs (compared to other Exchange Member types).

The Exchange notes that while Market Makers continue to account for a vast majority of the increased costs and resources placed on the Exchange and its systems (as discussed herein), Market Makers continue to be valuable market participants on the exchanges as the options market is a quote driven industry. The Exchange recognizes the value that Market Makers bring to the Exchange. In fact, the Exchange provides Market Makers transactional volume-based discounts and rebates to incentivize Market Makers to direct order flow to the Exchange to obtain the benefit of the rebate, which will in turn benefit all market participants by increasing liquidity on the Exchange.[40] The proposed Trading Permit fees discussed herein are meant to strike a balance between offsetting the costs to which Market Makers place on the Exchange and continuing to incentivize Market Makers to access and make a market on the Exchange.

In its review of Trading Permit fees, the Exchange found that since 2018, Market Makers were paying nearly the same Trading Permit fees as EEMs that used the MEO Interface despite Market Makers consuming the most resources on the Exchange's system and contributing to increased costs for the Exchange. As such, the Exchange proposes to establish higher, separate electronic Trading Permit fees for Market Makers that are more aligned with the costs and resources that Market Makers continue to place on the Exchange and its systems and will align the Trading Permit fees with those of the majority of other options exchanges at similar or lower rates.[41]

Additionally, the Exchange believes that the proposed change will better align the Exchange's Trading Permit fees with rates charged by its affiliates and competing options exchanges in the industry for similar Trading Permits for such market participants. As such, the Exchange believes the proposed Market Maker Trading Permit fees are reasonable in that they are lower than comparable fees at other options exchanges.[42] Further, the Exchange believes that the proposal is reasonably designed to continue to compete with other options exchanges by incentivizing market participants to register as Market Makers on the Exchange in a manner than enables the Exchange to improve its overall competitiveness and strengthen market quality for all market participants. As stated above, the Exchange believes the proposed Market Maker Trading Permit fees are an appropriate balance between offsetting the costs to which Market Makers cost the Exchange and continuing to incentivize Market Makers to access and make a market on the Exchange.

The proposed fees are equitable and not unfairly discriminatory as the fees apply equally to all Market Makers. As such, all similarly situated Market Makers, with the same number of appointments, will be subject to the same Market Maker Trading Permit fee. The Exchange also believes that assessing lower fees to Market Makers that quote in fewer classes is reasonable and appropriate as it will allow the Exchange to retain and attract smaller-scale Market Makers, which are an

[38] *See supra* note 8. The Exchange notes that it has since filed to remove these credits.

[39] The term ''Priority Customer'' means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial accounts(s). The number of orders shall be counted in accordance with Interpretation and Policy .01 of Exchange Rule 100. *See* the Definitions Section of the Fee Schedule and Exchange Rule 100, including Interpretation and Policy .01.

[40] For example, Market Makers may qualify for higher Tier 3 rebates as follows: (i) Maker rebates of ($0.44) in SPY, QQQ and IWM options for their Market Maker Origin when trading against Origins not Priority Customer, and (ii) Maker rebates of ($0.42) in SPY, QQQ and IWM options for their Market Maker Origin when trading against Priority Customer Origins, if the Market Maker executes at least 1.10% in SPY when adding liquidity. This is compared to a lower Professional Customer Tier 3 rebate of ($0.40) for options transactions in the same classes. *See* Fee Schedule, Section (1)(a), footnote ''✦.''

[41] *See supra* notes 24 to 32.

[42] *See id.*

integral component of the options industry marketplace. Since these smaller Market Makers utilize less bandwidth and capacity on the Exchange network due to the lower number of quoted classes, the Exchange believes it is reasonable and appropriate to offer such Market Makers a lower fee. The Exchange also notes that other options exchanges assess permit fees at different rates, based upon a member's participation on that exchange,[43] and, as such, this concept is not new or novel.

Further, the Exchange believes the proposed tiered structure of the Market Maker Trading Permit fees is reasonable and appropriate. Under the proposal, Market Makers will be charged monthly fees based on the greatest number of classes quoted on any given trading day in a calendar month. Under the proposed fee structure, the fees increase as the number of classes quoted by a Market Maker increases. The Exchange believes this structure is reasonable and not unfairly discriminatory because the Exchange's system requires increased performance and capacity in order to provide the opportunity for Market Makers to quote in a higher number of options classes on the Exchange. Specifically, the more classes that are actively quoted on the Exchange by a Market Maker requires increased memory for record retention, increased bandwidth for optimized performance, increased functionalities on each application layer, and increased optimization with regard to surveillance and monitoring of such classes quoted. As such, basing the Market Maker Trading Permit fee on the greatest number of classes quoted in on any given day in a calendar month is reasonable and appropriate when taking into account how the increased number of quoted classes directly impact the costs and resources required for the Exchange. Further, the Exchange believes that the proposed structure is equitable and not unfairly discriminatory as all similarly situated Market Makers will be charged the same fee. The Exchange notes that another options exchange in the industry calculates Market Maker Permit Fees in the same manner.[44]

There is no requirement, regulatory or otherwise, that any broker-dealer connect to and access any (or all of) the available options exchanges. One other exchange recently noted in a proposal to amend their own trading permit fees that of the 62 market making firms that are registered as Market Makers across Cboe, MIAX, and BOX, 42 firms access only one of the three exchanges.[45] Further, the Exchange and its affiliates, MIAX and MIAX Emerald, have a total of 47 members. Of those 47 total members, 35 are members of all three exchanges, four are members of only two (2) exchanges, and eight (8) are members of only one exchange. Of those that are Market Makers today on the Exchange, two (2) are not registered as Market Makers on MIAX and one (1) is not registered as a Market Maker on MIAX Emerald. Broken down even further, of those Market Makers that use the MEO Interface and reached the Exchange's top tier for the Trading Permit fee for June 2022, one (1) Market Maker was only a Member of the Exchange and not its two affiliates, MIAX and MIAX Emerald. The above data evidences that a Market Maker need not be a Member of all options exchanges, let alone the Exchange and its two affiliates, and market makers elect to do so based on their own business decisions and need to directly access each exchange's liquidity pool. Not only is there not an actual regulatory requirement to connect to every options exchange, the Exchange believes there is also no ''de facto'' or practical requirement as well, as further evidenced by the market maker membership analysis of the options exchanges discussed above. Indeed, Market Makers choose if and how to access a particular exchange and because it is a choice, the Exchange must set reasonable pricing, otherwise prospective market makers would not connect and existing Market Makers would disconnect from the Exchange.

The Exchange believes that elasticity of demand for Exchange Membership exists when it comes to purchasing a Trading Permit and, as evidenced by the below data, prior fee proposals have resulted in Members terminating their memberships.[46] For example, over the course of those prior filings, three Members terminated their memberships in the time since the proposed fee increase first went into effect. In June 2021, the month immediately preceding the initial implementation of the prior proposed fee change, the Exchange had 20 users of the MEO Interface and 28 users of the FIX Interface. These numbers remained stagnant until August 2021, where one Member that utilized the MEO Interface ceased utilizing the MEO Interface and again in December 2021 where one Member that utilized the FIX Interface ceased utilizing the FIX Interface. These numbers again remained stagnant until March 2022, where another Member that utilized the FIX Interface ceased utilizing the FIX Interface. This resulted in 19 users of the MEO Interface and 26 users of the FIX Interface. Further, other exchanges have also experienced termination of memberships if their members deem permit or membership fees to be unreasonable or excessive. For example, the Exchange notes that a BOX participant modified its access to BOX in connection with the implementation of a proposed change to BOX's permit fees.[47] The absence of new memberships coupled with the termination of two memberships on the Exchange, as well as similar membership changes on another options exchange in relation to a trading permit fee increase, clearly shows that elasticity of demand exists.

The Exchange notes that there are material costs associated with providing the infrastructure and headcount to fully-support access to the Exchange. The Exchange incurs technology expenses related to establishing and maintaining Information Security services, enhanced network monitoring and customer reporting associated with its network technology. While some of the expense is fixed, much of the expense is not fixed, and thus increases as the expenses associated with access services for Market Makers increases. For example, new Market Makers to the Exchange may require the purchase of additional hardware to support those Members as well as enhanced monitoring and reporting of customer performance that the Exchange provides. Further, as the total number of Market Makers increase, the Exchange may need to increase its data center

[43] *See supra* notes 24 to 32; *see also* MIAX Fee Schedule, Section (3)(b) and MIAX Emerald Fee Schedule, Section (3)(b).

[44] *See supra* notes 24 to 32.

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

[46] *See* Securities Exchange Act Release No. 95419 (August 4, 2022), 87 FR 48702 (August 10, 2022) (SR–PEARL–2022–30).

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

footprint and consume more power, resulting in increased costs charged by their third-party data center provider. Accordingly, the cost to the Exchange to provide access to its Market Makers is not fixed. The Exchange believes the proposed Market Maker Trading Permit fees are reasonable in order to offset a portion of the costs to the Exchange associated with providing access to Market Makers to its quote and order infrastructure.

The Exchange believes that charging higher fees to Market Makers, who connect solely through the MEO Interface, and EEMs that use the MEO Interface, is not unfairly discriminatory because Market Makers continue to account for the vast majority of network capacity utilization and trading activity on the Exchange and the MEO Interface provides higher throughput and enhanced functionality compared to the FIX Interface, justifying the increased cost. MEO Interface users account for the majority of expenses placed on the Exchange's systems. The MEO Interface also provides additional functionality that Market Makers and EEMs using the MEO Interface use to fulfill their market making obligations. The Exchange offers three time-in-force modifiers:[48] Day Limit (''Day''), Immediate-Or-Cancel (''IOC''), and Good 'Til Cancelled (''GTC'').[49] While all order types are available for use on either interface, only the time-in-force modifiers of IOC and Day are available on the MEO Interface.[50] Market Makers utilize the time-in-force of Day on orders to be posted on the MIAX Pearl Options Book[51] and to meet Market Makers' continuous quoting obligations under Exchange Rule 605(d).[52] EEMs using the MEO Interface and Market Makers that primarily remove liquidity tend to be more latency sensitive and utilize the time-in-force of IOC on orders when looking to remove liquidity from the MIAX Pearl Options Book. The MEO Interface allows the submission of Cancel-Replacement orders,[53] which allow for the immediate cancellation of a previously received order and the replacement of that order with a new order with new terms and conditions.[54] Cancel-Replacement orders are primarily used by Market Makers as part of their continuous quoting obligations. Market Makers use only the MEO Interface due to its lower latency, higher throughput, available time-in-force instructions and order types that assist them in satisfying their market making obligations. Market Makers do not use the FIX Interface due to the unavailability of the above functionality. While EEMs primarily use the FIX Interface, certain EEMs choose to use the MEO Interface due to its enhanced functionality and based on their own business models. The MEO Interface is the more robust interface offering lower latency and higher throughput. Market Makers use only the MEO Interface.

The Exchange notes that while Market Maker users of the MEO Interface continue to account for a vast majority of the increased System usage placed on the Exchange, Market Makers continue to be valuable market participants on the exchanges as the options market is a quote driven industry. The Exchange recognizes the value that Market Makers bring to the Exchange. The Exchange proposes higher, separate fees for users of the MEO Interface that are more aligned with the costs and resources that Market Makers continue to place on the Exchange and its systems.

Users of the MEO Interface, therefore, receive greater value than Users of the FIX Interface due to its higher throughput, lower latency, and available functionality. As the above data shows, the Exchange also expends much more resources to support the MEO Interface than it does to support the FIX Interface. Trading Permit fees for Members who connect through the MEO Interface are, therefore, higher than the Trading Permit fees for Members who connect through the FIX Interface. The proposed pricing structure also accounts for the corresponding use of the MEO and FIX Interfaces and proportionate pull on Exchange resources.

The Exchange believes that the proposed Market Maker Trading Permit fees are reasonable, equitable, and not unfairly discriminatory. The Exchange believes that the reasonableness of its proposed fees is demonstrated by the very fact that such fees are in line with, and in some cases lower than, the costs of similar access fees at other exchanges.[55] The Exchange notes these fees were similarly filed with the Commission and neither suspended nor disapproved.[56] The proposed fees are fair and equitable and not unfairly discriminatory because they apply equally to all Market Makers and access to the Exchange is offered on terms that are not unfairly discriminatory. The Exchange designed the fee rates in order to provide objective criteria for Market Makers of different sizes and business models that best matches their quoting activity on the Exchange. The Exchange believes that the proposed fee rates and criteria provide an objective and flexible framework that will encourage Market Makers to be appointed and quote in option classes while also equitably allocating the fees in a reasonable manner amongst Market Maker appointments to account for quoting and trading activity.

The Exchange again notes that it operates in a highly competitive market in which market makers can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees for services and products, in addition to order flow, to remain competitive with other exchanges. The Exchange believes that the proposed changes reflect this competitive environment.

The Exchange again notes it is not aware of any reason why Market Makers could not simply drop their access to an exchange (or not initially access an exchange) if an exchange were to establish prices for its non-transaction fees that, in the determination of such Market Maker, did not make business or economic sense for such Market Maker to access such exchange. The Exchange again notes that no market makers are required by rule, regulation, or competitive forces to be a Market Maker on the Exchange.

In sum, the Exchange believes the proposed fees are reasonable and reflect a competitive environment, as the Exchange seeks to amend its Trading

[48] *See* MIAX Pearl Options Exchange User Manual, Section 6, Order Types, *available at https://www.miaxoptions.com/exchange-functionality/pearl* (last visited June 30, 2022).

[49] *See, e.g.,* Exchange Rule 516.

[50] *See* preamble to Exchange Rule 516 (noting that not all order types and modifiers are available for use on each of the MEO Interface and the FIX Interface). *See also* Section 4.1.1.2 of the MEO Interface Specification, *available at https://www.miaxoptions.com/sites/default/files/page-files/MIAX_Express_Orders_MEO_v2.0.pdf* (indicating that the time-in-force instructions of IOC and Day are available on the MEO interface).

[51] The term ''Book'' means the electronic book of buy and sell orders and quotes maintained by the System. *See* Exchange Rule 100.

[52] Only the time-in-force modifiers of IOC and Day are available on the MEO Interface. *See* Exchange Rule 516 (noting that not all order types and modifiers are available for use on each of the MEO Interface and the FIX Interface). *See also* MIAX Pearl Options Exchange MEO Interface Specification, Section 4.1.1.2, *available at https://www.miaxoptions.com/sites/default/files/page-files/MIAX_Express_Orders_MEO_v2.0.pdf* (indicating that the time-in-force instructions of IOC and Day are available on the MEO interface).

[53] *See* MIAX Pearl Options Exchange User Manual, Section 6, Interfaces and Liquidity Types, *available at https://www.miaxoptions.com/exchange-functionality/pearl* (last visited May 16, 2022).

[54] *See* Exchange Rule 516(d).

[55] *See supra* notes 24 to 32.

[56] The Exchange presumes that the fees of other exchanges are reasonable, as required by the Exchange Act in the absence of any suspension or disapproval order by the Commission providing otherwise.

Permit fees for Market Makers, while still attracting Market Makers to continue to, or seek to, access the Exchange. The Exchange further believes the proposed Trading Permit fees discussed herein are an appropriate balance between offsetting the costs to which Market Makers cost the Exchange and continuing to incentivize Market Makers to access and make a market on the Exchange.

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

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

Intra-Market Competition

The Exchange believes that the proposed Market Maker Trading Permit fees do not place certain market participants at a relative disadvantage to other market participants because the proposed fees do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the fee rates are designed in order to provide objective criteria for Market Makers of different sizes and business models that best matches their quoting activity on the Exchange. Further, the Exchange believes that the proposed Market Maker Trading Permit fees will not impose a burden on intramarket competition because, when these fees are viewed in the context of the overall activity on the Exchange, Market Makers: (1) consume the most bandwidth and resources of the network; (2) transact the vast majority of the volume on the Exchange; and (3) require the high touch network support services provided by the Exchange and its staff, including more costly network monitoring, reporting and support services, resulting in a much higher cost to the Exchange. The Exchange notes that the majority of customer demand comes from Market Makers, whose transactions make up a majority of the volume on the Exchange. Further, as discussed herein, other Member types (Broker Dealers, Professional Customers, and Priority Customers) take up significantly less Exchange resources and costs. As such, the Exchange does not believe charging Market Makers higher Trading Permit fees than other Member types will impose a burden on intramarket competition.

The Exchange believes that the tiered structure of the proposed Market Maker Trading Permit fees will not impose a burden on intramarket competition because the tiered structure takes into account the number of classes quoted by each individual Market Maker. As discussed herein, the Exchange's system requires increased performance and capacity in order to provide the opportunity for each Market Maker to quote in a higher number of options classes on the Exchange. Specifically, the more classes that are actively quoted on the Exchange by a Market Maker requires increased memory for record retention, increased bandwidth for optimized performance, increased functionalities on each application layer, and increased optimization with regard to surveillance and monitoring of such classes quoted. As such, basing the Market Maker Trading Permit fee on the greatest number of classes quoted in on any given day in a calendar month is reasonable and appropriate when taking into account how the increased number of quoted classes directly impact the costs and resources for the Exchange.

Inter-Market Competition

The Exchange believes the proposed Market Maker Trading Permit fees do not place an undue burden on competition on other SROs that is not necessary or appropriate. In particular, market making firms are not forced to become market makers on all options exchanges. The Exchange notes that it has far less Market Makers as compared to the much greater number of market makers at other options exchanges. There are a number of large market makers that are participants of other options exchange but not Members of the Exchange. The Exchange is also unaware of any assertion that its existing fee levels or the proposed Market Maker Trading Permit fees would somehow unduly impair its competition with other options exchanges. To the contrary, if the fees charged are deemed too high by a market making firm, they can simply discontinue their membership with the Exchange.

The Exchange operates in a highly competitive market in which market participants can readily favor one of the 15 competing options venues if they deem fee levels at a particular venue to be excessive. Based on publicly-available information, and excluding index-based options, no single exchange has more than 11–12% equity options market share.[57] Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and exchange-traded fund (''ETF'') options order flow. As of August 23, 2022, for the month of August 2022, the Exchange had a market share of approximately 4.49% of executed multiply-listed equity options [58] and the Exchange believes that the ever-shifting market share among exchanges from month to month demonstrates that market participants can discontinue or reduce use of certain categories of products, or shift order flow, in response to fee changes. In such an environment, the Exchange must continually adjust its fees and fee waivers to remain competitive with other exchanges and to attract order flow to the facility.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

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,[59] and Rule 19b–4(f)(2) [60] 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:

[57] *See* Market at a Glance, *available at www.miaxoptions.com* (last visited (August 31, 2022).

[58] *See id.*

[59] 15 U.S.C. 78s(b)(3)(A)(ii).

[60] 17 CFR 240.19b–4(f)(2).

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–PEARL–2022–39 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–PEARL–2022–39. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PEARL–2022–39 and should be submitted on or before October 12, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[61]

J. Matthew DeLesDernier,

Deputy Secretary.

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[61] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95789; File No. SR–MRX–2022–09]

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Withdrawal of Proposed Rule Change To Amend Options 7, Section 6 to Add Port Fees

September 15, 2022.

On July 1, 2022, Nasdaq MRX, LLC (''MRX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 [1] and Rule 19b–4 thereunder,[2] a proposed rule change to assess port fees. The proposed rule change was published for comment in the **Federal Register** on July 18, 2022.[3]

On August 25, 2022, MRX withdrew the proposed rule change (SR–MRX–2022–09).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[4]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–20375 Filed 9–20–22; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95781; File No. SR–MRX–2022–07]

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Withdrawal of Proposed Rule Change To Amend Options 7, Section 5 To Add Membership Fees

September 15, 2022.

On June 29, 2022, Nasdaq MRX, LLC (''MRX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 [1] and Rule 19b–4 thereunder,[2] a proposed rule change to assess membership fees. The proposed rule change was published for comment in the **Federal Register** on July 18, 2022.[3]

On August 25, 2022, MRX withdrew the proposed rule change (SR–MRX–2022–07).

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 95262 (July 12, 2022), 87 FR 42780.

[4] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 95264 (July 12, 2022), 87 FR 42767.

[4] 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[4]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–20372 Filed 9–20–22; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95798; File No. SR–NYSE–2022–43]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Price List To Reflect the Fee for Directed Orders Routed by the Exchange to an Alternative Trading System

September 15, 2022.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on September 7, 2022, New York Stock Exchange LLC (''NYSE'' or the ''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 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 proposes to amend its Price List to reflect the fee for Directed Orders routed by the Exchange to an alternative trading system (''ATS''). 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.

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

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.