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–CBOE–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 Number SR–CBOE–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 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–CBOE–2022–015 and should be submitted on or before May 11, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–08388 Filed 4–19–22; 8:45 am]

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[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94718; File No. SR–EMERALD–2022–15]

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing of a Proposed Rule Change To Amend Its Fee Schedule To Adopt a Tiered-Pricing Structure for Additional Limited Service MIAX Emerald Express Interface Ports; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change

April 14, 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 April 1, 2022, MIAX Emerald, LLC (''MIAX Emerald'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I and II 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 and is, pursuant to Section 19(b)(3)(C) of the Act, hereby: (i) Temporarily suspending the proposed rule change; and (ii) instituting proceedings to determine whether to approve or disapprove the proposed rule change.

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 Emerald Options Fee Schedule (the ''Fee Schedule'') to amend certain port fees.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/emerald,* 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 [sic] 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 adopt a tiered-pricing structure for additional Limited Service MIAX Emerald Express Interface (''MEI'') Ports[3] available to Market Makers.[4] The Exchange believes a tiered-pricing structure will encourage Market Makers to be more efficient and economical when determining how to connect to the Exchange. This should also enable the Exchange to better monitor and provide access to the Exchange's network to ensure sufficient capacity and headroom in the System.[5]

The Exchange initially filed the proposed fee changes on August 2, 2021, with the changes being immediately effective (''First Proposed Rule Change'').[6] The First Proposed Rule Change was published for comment in the **Federal Register** on August 19, 2021.[7] The Commission received one comment letter on the First Proposed Rule Change.[8] The Exchange withdrew the First Proposed Rule Change on September 27, 2021 and resubmitted its proposal (''Second Proposed Rule Change'').[9] On September 28, 2021, the Exchange withdrew the Second Proposed Rule Change and re-submitted the proposal on September 28, 2021, with the proposed fee changes being immediately effective (''Third Proposed Rule Change'').[10] The Third Proposed Rule Change was published for comment in the **Federal Register** on October 5,

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

[2] 17 CFR 240.19b–4.

[3] The MIAX Emerald Express Interface (''MEI'') is a connection to the MIAX Emerald System that enables Market Makers to submit simple and complex electronic quotes to MIAX Emerald. *See* the Definitions Section of the Fee Schedule.

[4] The term ''Market Makers'' refers to Lead Market Makers (''LMMs''), Primary Lead Market Makers (''PLMMs''), and Registered Market Makers (''RMMs'') collectively. *See* the Definitions Section of the Fee Schedule and Exchange Rule 100.

[5] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* the Definitions Section of the Fee Schedule and Exchange Rule 100.

[6] *See* Securities Exchange Act Release No. 92662 (August 13, 2021), 86 FR 46726 (August 19, 2021) (SR–EMERALD–2021–25).

[7] *Id.*

[8] *See* Letter from Richard J. McDonald, Susquehanna International Group, LLC (''SIG''), to Vanessa Countryman, Secretary, Commission, dated September 7, 2021 (''SIG Letter 1'').

[9] *See* SR–EMERALD–2021–30.

[10] *See* Securities Exchange Act Release No. 93188 (September 29, 2021), 86 FR 55052 (October 5, 2021) (SR–EMERALD–2021–31).

2021.[11] The Third Proposed Rule Change provided additional justification for the proposed fee changes and addressed certain points raised in the single comment letter that was submitted on the First Proposed Rule Change. The Commission received four comment letters from three separate commenters on the Third Proposed Rule Change.[12] The Commission suspended the Third Proposed Rule Change on November 22, 2021.[13] The Exchange withdrew the Third Proposed Rule Change on December 1, 2021 and submitted a revised proposal for immediate effectiveness (''Fourth Proposed Rule Change'').[14] The Fourth Proposed Rule Change meaningfully attempted to address issues or questions that have been raised by providing additional justification and explanation for the proposed fee changes and directly respond to the points raised in SIG Letters 1, 2, and 3, as well as the SIFMA Letter submitted on the First and Second [sic] Proposed Rule Changes,[15] and feedback provided by Commission Staff during a telephone conversation on November 18, 2021 relating to the Third Proposed Rule Change. The Fourth Proposed Rule Change was published for comment in the **Federal Register** on December 20, 2021.[16] Although the Commission did not receive any comment letters on the Fourth Proposed Rule Change, the Commission suspended the Fourth Proposed Rule Change on January 27, 2022.[17] The Exchange withdrew the Fourth Proposed Rule Change on February 1, 2022 and submitted a revised proposal for immediate effectiveness, which was noticed and immediately suspended by the Commission on February 15, 2022 (''Fifth Proposed Rule Change'').[18] The Commission received one comment letter on the Fifth Proposed Rule Change.[19] The Exchange withdrew the Fifth Proposed Rule Change on March 30, 2022 and submits this revised proposal to be effective April 1, 2022 (''Sixth Proposed Rule Change'').

Additional Limited Service MEI Port Tiered-Pricing Structure

The Exchange proposes to amend the fees for additional Limited Service MEI Ports. Currently, the Exchange allocates two (2) Full Service MEI Ports[20] and two (2) Limited Service MEI Ports[21] per matching engine[22] to which each Market Maker connects. Market Makers may also request additional Limited Service MEI Ports for each matching engine to which they connect. 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. Prior to the First Proposed Rule Change, Market Makers were assessed a $100 monthly fee for each additional Limited Service MEI Port for each matching engine.

The Exchange now proposes to move from a flat monthly fee per additional Limited Service MEI Port for each matching engine to a tiered-pricing structure for additional Limited Service MEI Ports for each matching engine under which the monthly fee would vary depending on the number of additional Limited Service MEI Ports the Market Maker elects to purchase. Specifically, the Exchange will continue to provide the first and second additional [sic] Limited Service MEI Ports for each matching engine free of charge, as described above, per the initial allocation of Limited Service MEI Ports that Market Makers receive. The Exchange now proposes the following tiered-pricing structure: (i) The third and fourth additional [sic] Limited Service MEI Ports for each matching engine will increase from the current flat monthly fee of $100 to $200 per port; (ii) the fifth and sixth additional [sic] Limited Service MEI Ports for each matching engine will increase from the current flat monthly fee of $100 to $300 per port; and (iii) the seventh to the twelfth [sic] additional [sic] Limited Service MEI Ports will increase from the current monthly flat fee of $100 to $400 per port.

The Exchange believes the other exchanges' port fees are useful examples of alternative approaches to providing and charging for port access and provides the below table for comparison purposes only to show how its proposed fees compare to fees currently charged by other options exchanges for similar port access. As shown by the below

[11] *Id.*

[12] *See* letters from Richard J. McDonald, SIG, to Vanessa Countryman, Secretary, Commission, dated October 1, 2021 (''SIG Letter 2'') and October 26, 2021 (''SIG Letter 3''); *and* Ellen Green, Managing Director, Equity and Options Market Structure, Securities Industry and Financial Markets Association (''SIFMA''), to Vanessa Countryman, Secretary, Commission, dated November 26, 2021 (''SIFMA Letter'').

The Exchange notes that the Healthy Markets Association (''HMA'') submitted a comment letter on a related filing to amend fees for 10Gb ULL connections, on which SIG Letters 1, 2, and 3 as well as the SIFMA Letter also commented. *See* letter from Tyler Gellasch, Executive Director, HMA (''HMA''), to Hon. Gary Gensler, Chair, Commission, dated October 29, 2021 (commenting on SR–CboeEDGA–2021–017, SR–CboeBYX–2021–020, SR–Cboe–BZX–2021–047, SR–CboeEDGX–2021–030, SR–MIAX–2021–41, SR–PEARL–2021–45, and SR–EMERALD–2021–29 and stating that ''MIAX has repeatedly filed to change its connectivity fees in a way that will materially lower costs for many users, while increasing the costs for some of its heaviest of users. These filings have been withdrawn and repeatedly refiled. *Each time, however, the filings contain significantly greater information about who is impacted and how than other filings that have been permitted to take effect without suspension*'') (*emphasis added*) (''HMA Letter'').

[13] *See* Securities Exchange Act Release No. 93644 (November 22, 2021), 86 FR 67745 (November 29, 2021).

[14] *See* Securities Exchange Act Release No. 93772 (December 14, 2021), 86 FR 71965 (December 20, 2021) (SR–EMERALD–2021–43).

[15] The Exchange notes that while the HMA Letter applauds the level of disclosure the Exchange included in the First and Second Proposed Rule Changes, the HMA Letter does not raise specific issues with the First or Second Proposed Rule Changes. Rather, it references the Exchange's proposals by way of comparison to show the varying levels of transparency in exchange fees filings and recommends changes to the Commission's review process of exchange fee filings generally. Therefore, the Exchange does not feel it is necessary to address the issues raised in the HMA Letter.

[16] *See supra* note 14.

[17] *See* Securities Exchange Act Release No. 94087 (January 27, 2022), 87 FR 5918 (February 2, 2022) (SR–MIAX–2021–60, SR–EMERALD–2021–43) (Suspension of and Order Instituting Proceedings to Determine Whether to Approve or Disapprove Proposed Rule Changes to Amend Fee Schedules to Adopt Tiered-Pricing Structures for Additional Limited Service MIAX and MIAX Emerald Express Interface Ports).

[18] *See* Securities Exchange Act Release No. 94260 (February 15, 2022), 87 FR 9695 (February 22, 2022) (SR–EMERALD–2022–05) (Notice of Filing of a Proposed Rule Change to Amend Its Fee Schedule to Adopt a Tiered-Pricing Structure for Additional Limited Service MIAX Emerald Express Interface Ports; Suspension of and Order Instituting Proceedings to Determine Whether to Approve or Disapprove the Proposed Rule Change).

[19] *See* Letter from Richard J. McDonald, SIG, to Vanessa Countryman, Secretary, Commission, dated March 15, 2022 (''SIG Letter 4'').

[20] ''Full Service MEI Ports'' means a port which provides Market Makers with the ability to send Market Maker simple and complex quotes, eQuotes, and quote purge messages to the MIAX Emerald 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* the Definitions Section of the Fee Schedule.

[21] ''Limited Service MEI Ports'' means a port which provides Market Makers with the ability to send simple and complex eQuotes and quote purge messages only, but not Market Maker Quotes, to the MIAX Emerald 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* the Definitions Section of the Fee Schedule.

[22] ''Matching Engine'' means a part of the MIAX Emerald electronic system that processes options orders and trades on a symbol-by-symbol basis. Some Matching Engines will process option classes with multiple root symbols, and other Matching Engines may be dedicated to one single option root symbol (for example, options on SPY may be processed by one single Matching Engine that is dedicated only to SPY). A particular root symbol may only be assigned to a single designated Matching Engine. A particular root symbol may not be assigned to multiple Matching Engines. *See* the Definitions Section of the Fee Schedule.

table, the Exchange's proposed highest tier is still less than fees charged for similar port access provided by other options exchanges.

Exchange	Type of port	Monthly fee (per port)
MIAX Emerald (as proposed) (equity options market share of 3.95% as of March 29, 2022 for the month of March)[23].	Limited Service MEI Port	1–2 ports. FREE (not changed in this proposal). 3–4 ports. $200. 5–6 ports. $300. 7–12 [sic]. $400.
NYSE American, LLC ("Amex")[24] (equity options market share of 7.15% as of March 29, 2022 for the month of March)[25].	Order/Quote Entry Port	$450.
The NASDAQ Stock Market LLC ("NASDAQ")[26] (equity options market share of 8.62% as of March 29, 2022 for the month of March)[27].	SQF Port	1–5 ports. $1,500.00. 6–20 ports. $1,000.00. 21 or more ports. $500.

2. Statutory Basis

The Exchange believes that the proposed fees are consistent with Section 6(b) of the Act[28] in general, and furthers the objectives of Section 6(b)(4) of the Act[29] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among Members and other persons using any facility or system that the Exchange operates or controls. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act[30] 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 are not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes that the information provided to justify the proposed fees meets or exceeds the amount of detail required in respect of proposed fee changes as set forth in recent Commission and Commission Staff guidance. On March 29, 2019, the Commission issued an Order disapproving a proposed fee change by the BOX Market LLC Options Facility to establish connectivity fees for its BOX Network (the "BOX Order").[31] On May 21, 2019, the Commission Staff issued guidance "to assist the national securities exchanges and FINRA . . . in preparing Fee Filings that meet their burden to demonstrate that proposed fees are consistent with the requirements of the Securities Exchange Act."[32] Based on both the BOX Order and the Guidance, the Exchange believes that the proposed fees are consistent with the Act because they are (i) reasonable, equitably allocated, not unfairly discriminatory, and not an undue burden on competition; (ii) comply with the BOX Order and the Guidance; and (iii) supported by evidence (including comprehensive revenue and cost data and analysis) that the proposed fees are fair and reasonable and will not result in excessive pricing or supra-competitive profit.

The Proposed Fees Will Not Result in a Supra-Competitive Profit

The Exchange believes that exchanges, in setting fees of all types, should meet very high standards of transparency to demonstrate why each new fee or fee amendment meets the requirements of the Act that fees be reasonable, equitably allocated, not unfairly discriminatory, and not create an undue burden on competition among market participants. The Exchange believes this high standard is especially important when an exchange imposes various fees for market participants to access an exchange's marketplace.

In the Guidance, the Commission Staff states that, "[a]s an initial step in assessing the reasonableness of a fee, staff considers whether the fee is constrained by significant competitive forces."[33] The Guidance further states that, ". . . even where an SRO cannot demonstrate, or does not assert, that significant competitive forces constrain the fee at issue, a cost-based discussion may be an alternative basis upon which to show consistency with the Exchange Act."[34] In the Guidance, the Commission Staff further states that, "[i]f an SRO seeks to support its claims that a proposed fee is fair and reasonable because it will permit recovery of the SRO's costs, or will not result in excessive pricing or supra-competitive profit, specific information, including quantitative information, should be provided to support that argument."[35] The Exchange does not assert that the proposed fees are constrained by competitive forces. Rather, the Exchange asserts that the proposed fees are reasonable because they will permit recovery of the Exchange's costs in providing access services to supply Limited Service MEI Ports and will not result in the Exchange generating a supra-competitive profit.

The Guidance defines "supra-competitive profit" as "profits that exceed the profits that can be obtained in a competitive market."[36] The Commission Staff further states in the Guidance that "the SRO should provide an analysis of the SRO's baseline revenues, costs, and profitability (before the proposed fee change) and the SRO's expected revenues, costs, and profitability (following the proposed fee change) for the product or service in question."[37] The Exchange provides this analysis below.

The proposed fees are based on a cost-plus model. A Limited Service MEI Port provides access to each of the three Exchange networks, extranet, internal

[23] See "The market at a glance," available at *https://www.miaxoptions.com/* (last visited March 29, 2022).

[24] *See* NYSE American Options Fee Schedule, Section V.A., Port Fees.

[25] *See supra* note 23.

[26] *See* Nasdaq Stock Market, Nasdaq Options 7 Pricing Schedule, Section 3, Nasdaq Options Market—Ports and Other Services.

[27] *See supra* note 23.

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

[29] 15 U.S.C. 78f(b)(4).

[30] 15 U.S.C. 78f(b)(5).

[31] *See* Securities Exchange Act Release No. 85459 (March 29, 2019), 84 FR 13363 (April 4, 2019) (SR–BOX–2018–24, SR–BOX–2018–37, and SR–BOX–2019–04) (Order Disapproving Proposed Rule Changes to Amend the Fee Schedule on the BOX Market LLC Options Facility to Establish BOX Connectivity Fees for Participants and Non-Participants Who Connect to the BOX Network).

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

[33] *Id.*

[34] *Id.*

[35] *Id.*

[36] *Id.*

[37] *Id.*

network, and external network, all of which are necessary for Exchange operations. The Exchange's extranet provides the means by which the Exchange communicates with market participants and includes access to the Member portal and the ability to send and receive daily communications and reports. The internal network connects the extranet to the rest of the Exchange's systems and includes trading systems, market data systems, and network monitoring. The external network includes connectivity between the Exchange and other national securities exchanges, market data providers, and between the Exchange's locations in Princeton, New Jersey, Secaucus, New Jersey (NY4), Miami, Florida, and Chicago, Illinois (CH4). In determining the appropriate fees to charge Members and non-Members to access the Exchange's System Networks via Limited Service MEI Ports, the Exchange considered its costs to provide and maintain its System Networks and connectivity to those System Networks, using costs that are related to providing and maintaining access the Exchange's System Networks via Limited Service MEI Ports to estimate such costs, and set fees that are designed to cover its costs with a limited return in excess of such costs. The Exchange believes that it is important to demonstrate that the proposed fees are based on the Exchange's costs and reasonable business needs and believes the proposed fees will allow the Exchange to continue to offset expenses. However, as discussed more fully below, such fees may also result in the Exchange recouping less than all of its costs of providing and maintaining access to the Exchange's System Networks via Limited Service MEI Ports because of the uncertainty of forecasting subscriber decision making with respect to firms' port and access needs. The Exchange believes that the proposed fees will not result in excessive pricing or supra-competitive profit based on the total expenses the Exchange incurs versus the total revenue the Exchange projects to collect, and therefore meets the standards in the Act as interpreted by the Commission and the Commission Staff in the BOX Order and the Guidance.

The Exchange conducted an extensive cost review in which the Exchange analyzed nearly every expense item in the Exchange's general expense ledger to determine whether each such expense relates to Limited Service MEI Ports, and, if such expense did so relate, what portion (or percentage) of such expense actually supports access to the Exchange's System Networks via Limited Service MEI Ports. In determining what portion (or percentage) to allocate to access services, each Exchange department head, in coordination with other Exchange personnel, determined the expenses that support access services and System Networks associated with Limited Service MEI Ports. This included numerous meetings between the Exchange's Chief Information Officer, Chief Financial Officer, Head of Strategic Planning and Operations, Chief Technology Officer, various members of the Legal Department, and other group leaders. The analysis also included each department head meeting with the divisions of teams within each department to determine the amount of time and resources allocated by employees within each division towards the access services and System Networks associated with Limited Service MEI Ports. The Exchange reviewed each individual expense to determine if such expense was related to Limited Service MEI Ports. Once the expenses were identified, the Exchange department heads, with the assistance of our internal finance department, reviewed such expenses holistically on an Exchange-wide level to determine what portion of that expense supports providing access services and the System Networks. The sum of all such portions of expenses represents the total cost to the Exchange to provide access services associated with Limited Service MEI Ports. For the avoidance of doubt, no expense amount is allocated twice.

The analysis conducted by the Exchange is a proprietary process that is designed to make a fair and reasonable assessment of costs and resources allocated to support the provision of access services associated with Limited Service MEI Ports. The Exchange acknowledges that this assessment can only capture a moment in time and that costs and resource allocations may change. That is why the Exchange historically, and on an ongoing annual basis, reviews its costs and resource allocations to ensure it appropriately allocates resources to properly provide services to the Exchange's constituents.

The Exchange believes exchanges, like all businesses, should be provided flexibility when developing and applying a methodology to allocate costs and resources they deem necessary to operate their business, including providing market data and access services. The Exchange notes that costs and resource allocations may vary from business to business and, likewise, costs and resource allocations may differ from exchange to exchange when it comes to providing market data and access services. It is a business decision that must be evaluated by each exchange as to how to allocate internal resources and what costs to incur internally or via third parties that it may deem necessary to support its business and its provision of market data and access services to market participants.

The Exchange notes that there are material costs associated with providing the infrastructure and headcount to fully support access to the Exchange and its System Networks via Limited Service MEI Ports. The Exchange incurs technology expense related to establishing and maintaining Information Security services, enhanced network monitoring and customer reporting, as well as Regulation SCI-mandated processes associated with its network technology. Both fixed and variable expenses have significant impact on the Exchange's overall costs to provide and maintain access to the Exchange's System Networks via Limited Service MEI Ports. For example, to accommodate new Members, the Exchange may need to purchase additional hardware to support those Members as well as provide enhanced monitoring and reporting of customer performance that the Exchange and its affiliates currently provide. Further, as the total number of Members increases, the Exchange and its affiliates may need to increase their data center footprint and consume more power, resulting in increased costs charged by their third-party data center provider. Accordingly, the cost to the Exchange and its affiliates to provide access to its Members is not fixed. The Exchange believes the proposed fees are a reasonable attempt to offset a portion of those costs associated with providing access to and maintaining its System Networks' infrastructure and related Limited Service MEI Ports.

The Exchange estimated its total annual expense to provide and maintain access to the Exchange's System Networks via Limited Service MEI Ports based on the following general expense categories: (1) External expenses, which include fees paid to third parties for certain products and services; (2) internal expenses relating to the internal costs to provide the services associated with Limited Service MEI Ports; and (3) general shared expenses.[38] The

[38] The percentage allocations used in this proposed rule change may differ from past filings from the Exchange or its affiliates due to, among other things, changes in expenses charged by third parties, adjustments to internal resource allocations, and different system architecture of the Exchange as compared to its affiliates.

Guidance does not include any information regarding the methodology that an exchange should use to determine its cost associated with a proposed fee change. The Exchange utilized a methodology in this proposed fee change that it believes is reasonable because the Exchange analyzed its entire cost structure, allocated a percentage of each cost attributable to maintaining its System Networks, then divided those costs according to the cost methodology outlined below.

For 2022, the total annual expense for providing the access services associated with the Limited Service MEI Ports is estimated to be $1,394,961, or $116,246 per month. The Exchange believes it is more appropriate to analyze the proposed fees utilizing its estimated 2022 revenue and costs, which utilize the same presentation methodology as set forth in the Exchange's previously-issued Audited Unconsolidated Financial Statements.[39] The $1,394,961 estimated total annual expense is directly related to the access to the Exchange's System Networks via Limited Service MEI Ports and not any other product or service offered by the Exchange. For example, it does not include general costs of operating matching engines and other trading technology. No expense amount was allocated twice. Each of the categories of expenses are set forth in the following table and details of the individual line-item costs considered by the Exchange for each category are described further below.

External expenses

Category	Percentage of total expense amount allocated
Data Center Provider	4.95%
Fiber Connectivity Provider	2.64%
Security Financial Transaction Infrastructure ("SFTI"), and Other Connectivity and Content Service Providers	4.95%
Hardware and Software Providers	4.95%
Total of External Expenses	[40] $64,417

Internal Expenses

Category	Expense amount allocated
Employee Compensation	$916,303
Depreciation and Amortization	81,932
Occupancy	10,501
Total of Internal Expenses	1,008,736
Allocated Shared Expenses	321,808

The Exchange notes that it only has two primary sources of revenue, connectivity and port fees, to recover those costs associated with providing and maintaining access to the Exchange's System Networks. The Exchange notes that, without the specific third party and internal expense items, the Exchange would not be able to provide and maintain the System Networks and access to the System Networks via Limited Service MEI Ports to Members. Each of these expense items, including physical hardware, software, employee compensation and benefits, occupancy costs, and the depreciation and amortization of equipment, has been identified through a line-by-line item analysis to be integral to providing and maintaining the System Networks and access to System Networks via Limited Service MEI Ports.

For clarity, the Exchange took a conservative approach in determining the expense and the percentage of that expense to be allocated to providing and maintaining the System Networks and access to System Networks in connection with Limited Service MEI Ports. The Exchange describes the analysis conducted for each expense and the resources or determinations that were considered when determining the amount necessary to allocate to each expense. Only a portion of all fees paid to such third-parties is included in the third-party expenses described herein, and no expense amount is allocated twice. Accordingly, the Exchange does not allocate its entire information technology and communication costs to providing and maintaining the System Networks and access to Exchange's System Networks via Limited Service MEI Ports. This may result in the Exchange under allocating an expense to provide and maintain its System Networks and access to the System Networks via Limited Service MEI Ports, and such expenses may actually be higher than what the Exchange allocated as part of this proposal. The Exchange notes that expenses associated with its affiliates, MIAX Pearl and MIAX, are accounted for separately and are not included within the scope of this filing.

Further, as part its ongoing assessment of costs and expenses, the Exchange recently conducted a periodic, thorough review of its expenses and resource allocations, which resulted in revised percentage allocations in this

[39] For example, the Exchange previously noted that all third-party expense described in its prior fee filing was contained in the information technology and communication costs line item under the section titled ''Operating Expenses Incurred Directly or Allocated From Parent,'' in the Exchange's 2019 Form 1 Amendment containing its financial statements for 2018. *See* Securities Exchange Act Release No. 87877 (December 31, 2019), 85 FR 738 (January 7, 2020) (SR–EMERALD–2019–39). Accordingly, the third-party expense described in this filing is attributed to the same line item for the Exchange's 2022 Form 1 Amendment, which will be filed in 2023. In its Suspension Order, the Commission also asked should the Exchange to use cost projections or actual costs estimated for 2021 in a filing made in 2022, or make cost projections for 2022. The Exchange utilized expenses from its most recent audited financial statement as those numbers are more reliable than more recent unaudited numbers, which may be subject to change.

[40] The Exchange does not believe it is appropriate to disclose the actual amount it pays to each individual third-party provider as those fee arrangements are competitive or the Exchange is contractually prohibited from disclosing that number.

filing. The revised percentages are, among other things, the result of the shuffling of internal resources in response to business objectives and changes to fees charged and services provided by third parties. Therefore, the percentage allocations used in this proposed rule change may differ from past filings from the Exchange or its affiliates due to, among other things, changes in expenses charged by third parties, adjustments to internal resource allocations, and different system architecture of the Exchange as compared to its affiliates.

External Expense Allocations

For 2022, expenses relating to fees paid by the Exchange to third parties for products and services necessary to provide and maintain the System Networks and access to the System Networks via Limited Service MEI Ports are estimated to be $64,417. This includes, but is not limited to, a portion of the fees paid to: (1) A third party data center provider, including for the primary, secondary, and disaster recovery locations of the Exchange's trading system infrastructure; (2) a fiber connectivity provider for network services (fiber and bandwidth products and services) linking the Exchange's and its affiliates' office locations in Princeton, New Jersey and Miami, Florida, to all data center locations; (3) SFTI, which supports connectivity feeds for the entire U.S. options industry; (4) various other content and connectivity service providers, which provide content, connectivity services, and infrastructure services for critical components of options connectivity and network services; and (5) various other hardware and software providers that support the production environment in which Members and non-Members connect to the network to trade and receive market data.

Data Center Space and Operations Provider

The Exchange does not own the primary data center or the secondary data center, but instead leases space in data centers operated by third parties where the Exchange houses servers, switches and related equipment. Data center costs include an allocation of the costs the Exchange incurs to provide physical connectivity in the third-party data centers where it maintains its equipment as well as related costs. The data center provider operates the data centers (primary, secondary, and disaster recovery) that host the Exchange's network infrastructure. Without the retention of a third-party data center, the Exchange would not be able to operate its systems and provide a trading platform for market participants. The Exchange does not employ a separate fee to cover its data center expense and recoups that expense, in part, by charging for Limited Service MEI Ports.

The Exchange reviewed its data center footprint, including its total rack space, cage usage, number of servers, switches, cabling within the data center, heating and cooling of physical space, storage space, and monitoring and divided its data center expenses among providing transaction services, market data, and connectivity. Based on this review, the Exchange determined that 4.95% of the total applicable data center provider expense is applicable to providing and maintaining access services and System Networks associated with Limited Service MEI Ports. The Exchange believes this allocation is reasonable because Limited Service MEI Ports are a core means of access to the Exchange's network, providing one method for market participants to send and receive order and trade messages, as well as receive market data. A large portion of the Exchange's data center expense is due to providing and maintaining port access and connectivity to the Exchange's System Networks, including providing cabling within the data center between market participants and the Exchange. The Exchange excluded from this allocation servers that are dedicated to market data. The Exchange also did not allocate the remainder of the data center expense because it pertains to other areas of the Exchange's operations, such as other ports, market data, and transaction services.

Fiber Connectivity Provider

The Exchange engages a third-party service provider that provides the internet, fiber and bandwidth connections between the Exchange's networks, primary and secondary data center, and office locations in Princeton and Miami. Fiber connectivity is necessary for the Exchange to switch to its secondary data center in the case of an outage in its primary data center. Fiber connectivity also allows the Exchange's National Operations & Control Center (''NOCC'') and Security Operations Center (''SOC'') in Princeton to communicate with the Exchange's primary and secondary data centers. As such, all trade data, including the billions of messages each day, flow through this third-party provider's infrastructure over the Exchange's network. Without these services, the Exchange would not be able to operate and support the network and provide and maintain access services and System Networks associated with the Limited Service MEI Ports to its Members and their customers. Without the retention of a third-party fiber connectivity provider, the Exchange would not be able to communicate between its data centers and office locations. The Exchange does not employ a separate fee to cover its fiber connectivity expense and recoups that expense, in part, by charging for Limited Service MEI Ports.

The Exchange reviewed its costs to retain fiber connectivity from a third party, including the ongoing costs to support fiber connectivity, ensuring adequate bandwidth and infrastructure maintenance to support exchange operations, and ongoing network monitoring and maintenance and determined that 2.64% of the total fiber connectivity expense was applicable to providing and maintaining access services and System Networks associated with Limited Service MEI Ports. The Exchange believes this allocation is reasonable because Limited Service MEI Ports are a core means of access to the Exchange's network, providing one method for market participants to send and receive order and trade messages, as well as receive market data. A large portion of the Exchange's fiber connectivity expense is due to providing and maintaining connectivity between the Exchange's System Networks, data centers, and office locations and is core to the daily operation of the Exchange. Fiber connectivity is a necessary integral means to disseminate information from the Exchange's primary data center to other Exchange locations. The Exchange excluded from this allocation fiber connectivity usage related to market data or other business lines. The Exchange also did not allocate the remainder of this expense because it pertains to other areas of the Exchange's operations and does not directly relate to providing and maintaining access services and System Networks associated with Limited Service MEI Ports. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to retain fiber connectivity and maintain and provide access to its System Networks via Limited Service MEI Ports.

Connectivity and Content Services Provided by SFTI and Other Providers

The Exchange relies on SFTI and various other connectivity and content service providers for connectivity and data feeds for the entire U.S. options industry, as well as content, connectivity, and infrastructure services for critical components of the network that are necessary to provide and maintain its System Networks and access to its System Networks via Limited Service MEI Ports. Specifically, the Exchange utilizes SFTI and other content service provider to connect to other national securities exchanges, the Options Price Reporting Authority (''OPRA''), and to receive market data from other exchanges and market data providers. SFTI is operated by the Intercontinental Exchange, the parent company of five registered exchanges, and has become integral to the U.S. markets. The Exchange understands SFTI provides services to most, if not all, of the other U.S. exchanges and other market participants. Without services from SFTI and various other service providers, the Exchange would not be able to connect to other national securities exchanges, market data providers, or OPRA and, therefore, would not be able to operate and support its System Networks. The Exchange does not employ a separate fee to cover its SFTI and content service provider expense and recoups that expense, in part, by charging for Limited Service MEI Ports.

The Exchange reviewed it costs to retain SFTI and other content service providers, including network monitoring and maintenance, remediation of connectivity related issues, and ongoing administrative activities related to connectivity management and determined that 4.95% of the total applicable SFTI and other service provider expense is allocated to providing the access services associated with Limited Service MEI Ports. SFTI and other content service providers are key vendors and necessary components in providing connectivity to the Exchange. The primary service SFTI provides for the Exchange is connectivity to other national securities exchanges and their disaster recovery facilities and, therefore, a vast portion of this expense is allocated to providing access to the System Networks via Limited Service MEI Ports. Connectivity via SFTI is necessary for purposes of order routing and accessing disaster recovery facilities in the case of a system outage. Engaging SFTI and other like vendors provides purchasers of Limited Service MEI Ports connectivity to other national securities exchanges for purposes of order routing and disaster recovery. The Exchange did not allocate a portion of this expense that relates to the receipt of market data from other national securities exchange and OPRA. The Exchange also did not allocate the remainder of this expense because it pertains to other areas of the Exchange's operations and does not directly relate to providing and maintaining the System Networks or access to its System Networks via Limited Service MEI Ports. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to provide and maintain its System Networks and access to its System Networks via Limited Service MEI Ports, and not any other service, as supported by its cost review.

Hardware and Software Providers

The Exchange relies on dozens of third-party hardware and software providers for equipment necessary to operate its System Networks. This includes either the purchase or licensing of physical equipment, such as servers, switches, cabling, and monitoring devices. It also includes the purchase or license of software necessary for security monitoring, data analysis and Exchange operations. Hardware and software providers are necessary to maintain its System Networks and provide access to its System Networks via Limited Service MEI Ports. Hardware and software equipment and licenses for that equipment are also necessary to operate and monitor physical assets necessary to offer physical connectivity to the Exchange. Hardware and software equipment and licenses are key to the operation of the Exchange and, without them, the Exchange would not be able to operate and support its System Networks and provide access to its Members and their customers. The Exchange does not employ a separate fee to cover its hardware and software expense and recoups that expense, in part, by charging for Limited Service MEI Ports.

The Exchange reviewed it hardware and software related costs, including software patch management, vulnerability management, administrative activities related to equipment and software management, professional services for selection, installation and configuration of equipment and software supporting exchange operations and determined that 4.95% of the total applicable hardware and software expense is allocated to providing and maintaining access services and System Networks associated with Limited Service MEI Ports. Hardware and software equipment and licenses are key to the operation of the Exchange and its System Networks. Without them, market participants would not be able to access the System Networks via Limited Service MEI Ports. The Exchange only allocated the portion of this expense to the hardware and software that is related to a market participant's use of Limited Service MEI Ports, such as operating its matching engines. The Exchange, therefore, did not allocate portions of its hardware and software expense that related to other areas of the Exchange's business, such as hardware and software used for market data or unrelated administrative services. The Exchange also did not allocate the remainder of this expense because it pertains to other areas of the Exchange's operations, such as ports or transaction services, and does not directly relate to providing and maintaining its System Networks and access to its System Networks via Limited Service MEI Ports. The Exchange believes this allocation is reasonable because it represents the Exchange's cost to provide and maintain its System Networks and access to its System Networks via Limited Service MEI Ports, and not any other service, as supported by its cost review.

Internal Expense Allocations

For 2022, total internal expenses relating to the Exchange providing and maintaining its System Networks and access to its System Networks via Limited Service MEI Ports is estimated to be $1,008,736. This includes, but is not limited to, costs associated with: (1) Employee compensation and benefits for full-time employees that support the System Networks and access to System Networks via 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 as well as important system upgrades; (2) depreciation and amortization of hardware and software used to provide and maintain access services and System Networks associated with 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 and maintain the System Networks and access to System Networks via Limited Service MEI Ports. The breakdown of these costs is more fully described below.

Employee Compensation and Benefits

Human personnel are key to exchange operations and supporting the Exchange's ongoing provision and maintenance of the System Networks and access to System Networks via

Limited Service MEI Ports. The Exchange reviewed its employee compensation and benefits expense and the portion of that expense allocated to providing and maintaining the System Networks and access to System Networks via Limited Service MEI Ports. As part of this review, the Exchange considered employees whose functions include providing and maintaining the System Networks and Limited Service MEI Ports and used a blended rate of compensation reflecting salary, stock and bonus compensation, bonuses, benefits, payroll taxes, and 401K matching contributions.[41]

Based on this review, the Exchange determined to allocate $916,303 in employee compensation and benefits expense to providing access to the System Networks. To determine the appropriate allocation the Exchange reviewed the time employees allocated to supporting its System Networks and access to its System Networks via Limited Service MEI Ports. Senior staff also reviewed these time allocations with department heads and team leaders to determine whether those allocations were appropriate. These employees are critical to the Exchange to provide and maintain access to its System Networks via Limited Service MEI Ports for its Members, non-Members and their customers. The Exchange determined the above allocation based on the personnel whose work focused on functions necessary to provide and maintain the System Networks and access to System Networks via Limited Service MEI Ports. The Exchange does not charge a separate fee regarding employees who support Limited Service MEI Ports and the Exchange seeks to recoup that expense, in part, by charging for Limited Service MEI Ports.

Depreciation and Amortization

A key expense incurred by the Exchange relates to the depreciation and amortization of equipment that the Exchange procured to provide and maintain the System Networks and access to System Networks via Limited Service MEI Ports. The Exchange reviewed all of its physical assets and software, owned and leased, and determined whether each asset is related to providing and maintaining its System Networks and access to its System Networks via Limited Service MEI Ports, and added up the depreciation of those assets. All physical assets and software, which includes assets used for testing and monitoring of Exchange infrastructure, were valued at cost, depreciated or leased over periods ranging from three to five years. In determining the amount of depreciation and amortization to apply to providing Limited Service MEI Ports and the System Networks, the Exchange considered the depreciation of hardware and software that are key to the operation of the Exchange and its System Networks. This includes servers, computers, laptops, monitors, information security appliances and storage, and network switching infrastructure equipment, including switches and taps that were previously purchased to maintain and provide access to its System Networks via Limited Service MEI Ports. Without them, market participants would not be able to access the System Networks. The Exchange seeks to recoup a portion of its depreciation expense by charging for Limited Service MEI Ports.

Based on this review, the Exchange determined to allocate $81,932 in depreciation and amortization expense to providing access to the System Networks via Limited Service MEI Ports. The Exchange only allocated the portion of this depreciation expense to the hardware and software related to a market participant's use of M [sic] Limited Service MEI EO [sic] Ports. The Exchange, therefore, did not allocate portions of depreciation expense that relates to other areas of the Exchange's business, such as the depreciation of hardware and software used for market data or unrelated administrative services.[42]

Occupancy

The Exchange rents and maintains multiple physical locations to house staff and equipment necessary to support access services, System Networks, and exchange operations. The Exchange's occupancy expense is not limited to the housing of personnel and includes locations used to store equipment necessary for Exchange operations. In determining the amount of its occupancy related expense, the Exchange considered actual physical space used to house employees whose functions include providing and maintaining the System Networks and Limited Service MEI Ports. Similarly, the Exchange also considered the actual physical space used to house hardware and other equipment necessary to provide and maintain the System Networks and Limited Service MEI Ports. This equipment includes computers, servers, and accessories necessary to support the System Networks and Limited Service MEI Ports. Based on this review, the Exchange determined to allocate $10,501 of its occupancy expense to provide and maintain the System Networks and Limited Service MEI Ports. The Exchange believes this allocation is reasonable because it represents the Exchange's cost to rent and maintain a physical location for the Exchange's staff who operate and support the System Networks, including providing and maintaining access to its System Networks via Limited Service MEI Ports. The Exchange considered the rent paid for the Exchange's Princeton and Miami offices, as well as various related costs, such as physical security, property management fees, property taxes, and utilities at each of those locations. The Exchange did not include occupancy expenses related to housing employees and equipment related to other Exchange operations, such as market data and administrative services.

* * * * *

The Exchange notes that a material portion of its total overall expense is allocated to the provision and maintenance of access services (including connectivity and ports). The Exchange believes this is reasonable as the Exchange operates a technology-based business that differentiates itself from its competitors based on its more deterministic and resilient trading systems that rely on access to a high performance network, resulting in significant technology expense. Over two-thirds of Exchange staff are technology-related employees. The majority of the Exchange's expense is technology-based. Thus, the Exchange believes it is reasonable to allocate a material portion of its total overall expense towards providing and maintaining its System Networks and access to its System Networks via Limited Service MEI Ports.

[41] For purposes of this allocation, the Exchange did not consider expenses related to supporting employees who support Limited Service MEI Ports, such as office space and supplies. The Exchange determined cost allocation for employees who perform work in support of offering access services and System Networks to arrive at a full time equivalent ("FTE") of 2.8 FTEs across all the identified personnel. The Exchange then multiplied the FTE times a blended compensation rate for all relevant Exchange personnel to determine the personnel costs associated with providing the access services and System Networks associated with Limited Service MEI Ports.

[42] All of the expenses outlined in this proposed fee change refer to the operating expenses of the Exchange. The Exchange did not included any future capital expenditures within these costs. Depreciation and amortization represent the expense of previously purchased hardware and internally developed software spread over the useful life of the assets. Due to the fact that the Exchange has only included operating expense and historical purchases, there is no double counting of expenses in the Exchange's cost estimates.

Allocated Shared Expense

Finally, a limited portion of general shared expenses was allocated to overall Limited Service MEI Port costs as without these general shared costs, the Exchange would not be able to operate in the manner that it does and provide Limited Service MEI Ports. The costs included in general shared expenses include recruiting and training, marketing and advertising costs, professional fees for legal, tax and accounting services, and telecommunications costs. For 2022, the Exchange's general shared expense allocated to Limited Service MEI Ports and the System Networks that support those connections is estimated to be $321,808. The Exchange used the weighted average of the above allocations to determine the amount of general shared expenses to allocate to the Exchange. Next, based on additional management and expense analysis, these fees are allocated to the proposal.

Revenue and Estimated Profit Margin

The Exchange only has four primary sources of revenue and cost recovery mechanisms to fund all of its operations: Transaction fees, access fees (which includes Limited Service MEI Ports), regulatory fees, and market data fees. Accordingly, the Exchange must cover all of its expenses from these four primary sources of revenue and cost recovery mechanisms.

To determine the Exchange's estimated revenue associated with Limited Service MEI Ports, the Exchange analyzed the number of Members currently utilizing Limited Service MEI Ports and used a recent monthly billing cycle representative of current monthly revenue. The Exchange also provided its baseline by analyzing March 2022, the monthly billing cycle prior to the proposed fees and compared this to its expenses for that month. As discussed below, the Exchange does not believe it is appropriate to factor into its analysis future revenue growth or decline into its estimates for purposes of these calculations, given the uncertainty of such estimates due to the continually changing access needs of market participants and potential changes in internal and third-party expenses.

For March 2022, prior to the proposed fees, Members purchased 877 Limited Service MEI Ports, for which the Exchange anticipates charging $64,100. This will result in a loss of $52,146 ($64,100 in Limited Service MEI Port revenue, minus $116,246 in monthly Limited Service MEI Port expenses). For April 2022, assuming the Exchange charges the proposed fees described herein, the Exchange anticipates Members purchasing 877 Limited Service MEI Ports, for which the Exchange anticipates charging $223,400. This will result in a profit of $107,154 ($223,400 in Limited Service MEI Port revenue, minus $116,246 in monthly Limited Service MEI Port expenses) for that month (a 48% profit margin).

The Exchange believes that conducting the above analysis on a per month basis is reasonable as the revenue generated from access services subject to the proposed fee generally remains static from month to month. The Exchange also conducted the above analysis on a per month basis to comply with the Commission Staff's Guidance, which requires a baseline analysis to assist in determining whether the proposal generates a supra-competitive profit. The Exchange cautions that this profit margin may also fluctuate from month to month based on the uncertainty of predicting how many ports may be purchased from month to month as Members are free to add and drop ports at any time based on their own business decisions.

The Exchange believes the proposed margin is reasonable and will not result in a ''supra-competitive'' profit. The Guidance defines ''supra-competitive profit'' as ''profits that exceed the profits that can be obtained in a competitive market.''[43] Until recently, the Exchange has operated at a cumulative net annual loss since it launched operations in 2019.[44] The Exchange has operated at a net loss due to a number of factors, one of which is choosing to forgo revenue by offering certain products, such as Limited Service MEI Ports, at lower rates than other options exchanges to attract order flow and encourage market participants to experience the high determinism, low latency, and resiliency of the Exchange's trading systems. The Exchange should not now be penalized for now seeking to raise it fees to near market rates after offering such products as discounted prices.

The Exchange notes that its revenue estimate is based on estimates and will only be realized to the extent such revenue actually produces the revenue estimated. As a generally new entrant to the hyper-competitive exchange environment, and an exchange focused on driving competition, the Exchange does not yet know whether such expectations will be realized. For instance, in order to generate the revenue expected from Limited Service MEI Ports, the Exchange will have to be successful in retaining existing clients that wish to maintain physical connectivity or obtaining new clients that will purchase such services. To the extent the Exchange is successful in encouraging new clients to connect directly to the Exchange, the Exchange does not believe it should be penalized for such success. The Exchange, like other exchanges, is, after all, a for-profit business. While the Exchange believes in transparency around costs and potential margins, the Exchange does not believe that these estimates should form the sole basis of whether or not a proposed fee is reasonable or can be adopted. Instead, the Exchange believes that the information should be used solely to confirm that an Exchange is not earning supra-competitive profits, and the Exchange believes its cost analysis and related estimates demonstrate this fact.

Further, the proposed profit margin reflects the Exchange's efforts to control its costs. A profit margin should not be judged alone based on its size, but whether the ultimate fee reflects the value of the services provided and is in line with other exchanges. A profit margin on one exchange should not be deemed excessive where that exchange has been successful in control costs, but not excessive where an exchange is charging the same fee but has a lower profit margin due to higher costs.

The expected margin is reasonable because the Exchange offers a premium System Network, System Networks connectivity, and a highly deterministic trading environment. The Exchange is recognized as a leader in network monitoring, determinism, risk protections, and network stability. For example, the Exchange experiences approximately a 95% determinism rate, system throughput of approximately 18 million quotes per second and average round trip latency rate of approximately 17 microseconds for a single quote. The Exchange provides extreme performance and radical scalability designed to match the unique needs of trading differing asset class/market model combination. Exchange systems offer two customer interfaces, FIX gateway for orders, and MEI interfaces and data feeds with best-in-class wire order determinism. The Exchange also offers automated continuous testing to ensure high reliability, advanced monitoring and systems security, and employs a software architecture that results in minimizing the demands on power,

[43] *See supra* note 32.

[44] The Exchange has incurred a cumulative loss of $22 million since its inception in 2019 to 2020, the last year for which the Exchange's Form 1 data is available. *See* Exchange's Form 1/A, Application for Registration or Exemption from Registration as a National Securities Exchange, filed July 28, 2021, *available at https://sec.report/Document/9999999997-21-004557/.*

space, and cooling while allowing for rapid scalability, resiliency and fault isolation. The Exchange also provides latency equalized cross-connects in the primary data center ensures fair and cost efficient access to the MIAX systems. The Exchange, therefore, believes the anticipated margin is reasonable because it reflect the Exchange cost controls and the quality of the Exchanges systems.

The Exchange also believes its proposed margin does not exceed what can be obtained in a competitive market. The Exchange is one of sixteen registered U.S. options exchanges and maintains an average market share of approximately 3.95%.[45] The anticipated rate of return is reasonable because it is based on a rate that likely remains lower than what other exchanges with comparable market share charge for similar connectivity. For example the below table is provided for comparison purposes only to show how the Exchange's proposed fees compare to fees currently charged by other options exchanges for similar port access. As shown by the below table, the Exchange's proposed fee remains less than fees charged for similar port access provided by other options exchanges with similar market share, notwithstanding that the competing exchanges may have different system architectures that may result in different cost structures for the provision of ports.

Exchange	Type of port	Monthly fee (per port)
MIAX Emerald (as proposed) (equity options market share of 3.95% as of March 29, 2022 for the month of March).[46]	Limited Service MEI Port	1–2 ports. FREE (not changed in this proposal); 3–4 ports. $200; 5–6 ports. $300; 7–12 [sic]. $400.
Amex[47] (equity options market share of 7.15% as of March 29, 2022 for the month of March).[48]	Order/Quote Entry Port	$450.
NASDAQ[49] (equity options market share of 8.62% as of March 29, 2022 for the month of March).[50]	SQF Port	1–5 ports. $1,500.00; 6–20 ports. $1,000.00; 21 or more ports. $500.

Lastly, the Exchange notes that this is a singular potential profit margin from a single revenue source and is not reflective of the Exchange's overall profit margin. This profit margin may be offset by lower or negative profit margins generated by other areas of the Exchange's operations that are not subject to this proposed fee change. The Exchange only has four primary sources of revenue and cost recovery mechanisms to fund all of its operations: transaction fees, access fees (which includes Limited Service MEI Ports), regulatory fees, and market data fees. A potential profit margin in one area may be used to offset a potential loss in another area, and, therefore, a potential profit margin from a single product is not representative of the Exchange's overall profitability and whether that singular profit exceeds the profits that can be obtained in a competitive market.

The Proposed Fees Are Reasonable When Compared to The Fees of Other Options Exchanges With Similar Market Share

The Exchange does not have visibility into other exchanges' costs to provide ports or their fee markup over those costs, and therefore cannot use other exchange's port fees as a benchmark to determine a reasonable markup over the costs of providing ports. Nevertheless, the Exchange believes the other exchanges' port fees are useful examples of alternative approaches to providing and charging for ports notwithstanding that the competing exchanges may have different system architectures that may result in different cost structures for the provision of connectivity. To that end, the Exchange believes the proposed fees are reasonable because the proposed fees are still less than fees charged for similar ports provided by other options exchanges with comparable market shares.

As described in the above table, the Exchange's proposed fees remain less than fees charged for similar ports provided by other options exchanges with similar market share. In each of the above cases, the Exchange's proposed fees are still significantly lower than that of competing options exchanges with similar market share. Despite proposing lower or similar fees to that of competing options exchanges with similar market share, the Exchange believes that it provides a premium network experience to its Members and non-Members via a highly deterministic System, enhanced network monitoring and customer reporting, and a superior network infrastructure than markets with higher market shares and more expensive connectivity alternatives. Each of the rates in place at competing options exchanges were filed with the Commission for immediate effectiveness and remain in place today.

The Proposed Fees Are Equitably Allocated

The Exchange believes that the proposed fees are equitably allocated among users of the network connectivity alternatives, as the users of the Limited Service MEI Ports consume the most bandwidth and resources of the network. Specifically, the Exchange notes that the users who take the maximum amount of Limited Service MEI Ports account for approximately greater than 99% of message traffic over the network, while the users of fewer Limited Service MEI Ports account for approximately less than 1% of message traffic over the network. In the Exchange's experience, users who only utilize the two free Limited Service MEI Ports do not have a business need for the high performance network solutions required by users who take the maximum amount of Limited Service MEI Ports. The Exchange's high performance network solutions and supporting infrastructure (including employee support), provides unparalleled system throughput and the capacity to handle approximately 18 million quote messages per second. On an average day, the Exchange handles over approximately 3 billion total messages. Of that total, users of the maximum amount of Limited Service MEI Ports generate approximately 3 billion messages, and users who utilize the two free Limited Service MEI Ports generate 500,000 messages. However, in

[45] *See supra* note 23.

[46] *See ''The market at a glance,'' available at https//www.miaxoptions.com/* (last visited March 29, 2022).

[47] *See* NYSE American Options Fee Schedule, Section V.A., Port Fees.

[48] *See supra* note 23.

[49] *See* Nasdaq Stock Market, Nasdaq Options 7 Pricing Schedule, Section 3, Nasdaq Options Market—Ports and Other Services.

[50] *See supra* note 23.

order to achieve a consistent, premium network performance, the Exchange must build out and maintain a network that has the capacity to handle the message rate requirements of its most heavy network consumers. These billions of messages per day consume the Exchange's resources and significantly contribute to the overall network connectivity expense for storage and network transport capabilities. Given this difference in network utilization rate, the Exchange believes that it is reasonable, equitable, and not unfairly discriminatory that users who take the most Limited Service MEI Ports pay for the vast majority of the shared network resources from which all Member and non-Member users benefit, but is designed and maintained from a capacity standpoint to specifically handle the message rate and performance requirements of those users.

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 that is not necessary or appropriate in furtherance of the purposes of the Act.

With respect to intra-market competition, the Exchange does not believe that the proposed rule change would place certain market participants at the Exchange at a relative disadvantage compared to other market participants or affect the ability of such market participants to compete. As stated above, the Exchange does not believe its proposed pricing will impose a barrier to entry to smaller participants and notes that the proposed pricing structure is associated with relative usage of the various market participants. Firms that are primarily order routers seeking best-execution do not utilize Limited Service MEI Ports on the Exchange and therefore will not pay the fees associated with the tiered-pricing structure. Rather, the fees described in the proposed tiered-pricing structure will only be allocated to Market Making firms that engage in advanced trading strategies and typically request multiple Limited Service MEI Ports, beyond the two that are free. Accordingly, the firms engaged in a Market Making business generate higher costs by utilizing more of the Exchange's resources. Those Market Making firms that purchase higher amounts of additional Limited Service MEI Ports tend to have specific business oriented market making and trading strategies, as opposed to firms engaging solely in best-execution order routing business. Additionally, the use of such additional Limited Service MEI Ports is entirely voluntary.

The Exchange also does not believe that the proposed rule change will result in any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act. As discussed above, options market participants are not forced to access all options exchanges. There is no reason to believe that our proposed price increase will harm another exchange's ability to compete. The Exchange operates in a highly competitive environment, and as discussed above, its ability to price access and ports is constrained by competition among exchanges and third parties. There are other options markets of which market participants may access in order to trade options. There is also a possible range of alternative strategies, including routing to the exchange through another participant or market center or accessing the Exchange indirectly. Accordingly, the Exchange does not believe its proposed fee changes impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

One comment letter was submitted on the Fifth Proposed Rule Change [51] and the Exchange responds to issues raised in that comment letter here.

First, SIG Letter 4 asserts that the Exchange's motivation for the proposed fees is not a proper justification and refers to statements included in withdrawn filings about the Exchange's need to recoup initial capital expenditures. SIG Letter 4 does not provided a reason why recoupment of initial capital expenditures is not a proper justification for a proposed rule change. SIG Letter 4 also asserts that enhancing profitability is not an appropriate justification for the proposed fee change. The Exchange never asserted in any of the preceding versions of this proposed fee change that enhancing profitability was a motivation for the proposed fee change. Rather, the Exchange provided numerous reasons for the proposed fee change, including the need to cover ongoing internal and external expenses and anticipated increases in those costs due to ongoing inflationary pressures.

Second, SIG Letter 4 claims that the Exchange omitted the data necessary to assess the proposed fee change under the Exchange Act. SIG Letter 4 also asserts that the Exchange's disclosed cost data is not reliable. With each iteration of this proposed fee change, the Exchange provided more detail about its cost based analysis and rationale. In accordance with the Guidance, the Exchange has provided sufficient detail to support a finding that the proposed fees are consistent with the Exchange Act. The proposal includes a detailed description of the Exchange's costs and how the Exchange determined to allocate those costs related to the proposed fees. The Exchange was commended by an industry group regarding the level of transparency and disclosure included in the proposed fee changes and that group was supportive of the efforts made by the Exchange and its affiliates to provide increased transparency and justification for their proposed fees. The commenter specifically noted that:

> "MIAX has repeatedly filed to change its connectivity fees in a way that will materially lower costs for many users, while increasing the costs for some of its heaviest of users. These filings have been withdrawn and repeatedly refiled. Each time, however, the filings contain significantly greater information about who is impacted and how than other filings that have been permitted to take effect without suspension. For example, MIAX detailed the associated projected revenues generated from the connectivity fees by user class, again in a clear attempt to comply with the SRO Fee Filing Guidance." [52]

Despite the Exchange refiling its fee proposals to include significantly greater information about the impact of the proposed fees on Members and non-Members, primarily at the request of the Commission Staff and in response to comments from SIG, SIG argues that the data the Exchange provided is insufficient or unreliable. Section 6(b)(4) of the Act [53] requires an exchange to "provide for the equitable allocation of reasonable dues, fees and other charges." The standard set by Congress for the Exchange to establish or amend a certain fee is "reasonableness," and the Exchange provided significant detail in this filing and past filings to support a finding that the proposed fees are reasonable under the Exchange Act.

SIG Letter 4 also claims that the Exchange has not shown that the

[51] *See supra* note 19.

[52] *See* letter from Tyler Gellasch, Executive Director, Healthy Markets Association ("HMA"), to Hon. Gary Gensler, Chair, Commission, dated October 29, 2021 (commenting on SR–CboeEDGA–2021–017, SR–CboeBYX–2021–020, SR–Cboe–BZX–2021–047, SR–CboeEDGX–2021–030, SR–MIAX–2021–41, SR–PEARL–2021–45, and SR–EMERALD–2021–29) ("HMA Letter").

[53] 15 U.S.C. 78f(b)(4).

estimated profit margin is reasonable. In this filing, the Exchange enhanced its justification and support to find that the projected margin is reasonable and would not result in a supra-competitive profit. SIG Letter 4 states that SIG believes exchanges are utilities and utilities should only generate single to low double digit profit margins. This statement assumes that the projected profit margin is reflective of the Exchange's overall profit margin and ignores that this is a single profit margin from a single offering that is offset by lower or negative profit margins for other products and services offered by the Exchange. SIG's statement that utilities should only generate single to low double digit profit margins ignores SIG's own reference to a 14.4%, low double digit profit margin from one of the Exchange's recent proposed fee changes, as well as single digit to negative profit margins in other Exchange filings currently pending before the Commission.

III. Suspension of the Proposed Rule Change

Pursuant to Section 19(b)(3)(C) of the Act,[54] at any time within 60 days of the date of filing of a proposed rule change pursuant to Section 19(b)(1) of the Act,[55] the Commission summarily may temporarily suspend the change in the rules of a self-regulatory organization (''SRO'') 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. As discussed below, the Commission believes a temporary suspension of the proposed rule change is necessary and appropriate to allow for additional analysis of the proposed rule change's consistency with the Act and the rules thereunder.

As the Exchange further details above, the Exchange first filed a proposed rule change proposing fee changes as proposed herein on August 2, 2021. That proposal, SR–EMERALD–2021–25, was published for comment in the **Federal Register** on August 19, 2021.[56] On September 24, 2021, the Exchange withdrew SR–EMERALD–2021–25 and re-filed its proposal on September 27, 2021 (SR–EMERALD–2021–30). On September 28, 2021, the Exchange withdrew SR–EMERALD–2021–30 and filed a proposed rule change proposing fee changes as proposed herein (SR–EMERALD–2021–31). That proposal, SR–EMERALD–2021–31, was published for comment in the **Federal Register** on October 5, 2021.[57] The Commission received three comment letters from two separate commenters on SR–EMERALD–2021–31.[58] On November 22, 2021, pursuant to Section 19(b)(3)(C) of the Act, the Commission: (1) Temporarily suspended the proposed rule change; and (2) instituted proceedings to determine whether to approve or disapprove the proposed rule change.[59] On December 1, 2021, the Exchange withdrew SR–EMERALD–2021–31 and filed a proposed rule change proposing fee changes as proposed herein (SR–EMERALD–2021–43). That filing, SR–EMERALD–2021–43, was published for comment in the **Federal Register** on December 20, 2021.[60] On January 27, 2022, pursuant to Section 19(b)(3)(C) of the Act, the Commission: (1) Temporarily suspended the proposed rule change (SR–EMERALD–2021–43); and (2) instituted proceedings to determine whether to approve or disapprove the proposal.[61] On February 1, 2022, the Exchange withdrew SR–EMERALD–2021–43 and filed a proposed rule change proposing fee changes as proposed herein (SR–EMERALD–2022–05). On February 15, 2022, pursuant to Section 19(b)(3)(C) of the Act, the Commission: (1) Temporarily suspended the proposed rule change (SR–EMERALD–2022–05); and (2) instituted proceedings to determine whether to approve or disapprove the proposal.[62] The Commission received one comment letter on SR–EMERALD–2022–05.[63] On March 30, 2022, the Exchange withdrew SR–EMERALD–2022–05 and on April 1, 2022, filed the instant filing, which is substantially similar.

When exchanges file their proposed rule changes with the Commission, including fee filings like the Exchange's present proposal, they are required to provide a statement supporting the proposal's basis under the Act and the rules and regulations thereunder applicable to the exchange.[64] The instructions to Form 19b–4, on which exchanges file their proposed rule changes, specify that such statement ''should be sufficiently detailed and specific to support a finding that the proposed rule change is consistent with [those] requirements.'' [65]

Among other things, exchange proposed rule changes are subject to Section 6 of the Act, including Sections 6(b)(4), (5), and (8), which requires the rules of an exchange to: (1) Provide for the equitable allocation of reasonable fees among members, issuers, and other persons using the exchange's facilities; [66] (2) perfect the mechanism of a free and open market and a national market system, protect investors and the public interest, and not permit unfair discrimination between customers, issuers, brokers, or dealers; [67] and (3) not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[68]

In temporarily suspending the Exchange's fee change, the Commission intends to further consider whether the proposed additional Limited Service MEI Port fees are consistent with the statutory requirements applicable to a national securities exchange under the Act. In particular, the Commission will consider whether the proposed rule change satisfies the standards under the Act and the rules thereunder requiring, among other things, that an exchange's rules provide for the equitable allocation of reasonable fees among members, issuers, and other persons using its facilities; not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers; and not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[69]

Therefore, the Commission finds that it is appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act, to temporarily suspend the proposed rule change.[70]

[54] 15 U.S.C. 78s(b)(3)(C).

[55] 15 U.S.C. 78s(b)(1).

[56] *See* Securities Exchange Act Release No. 92662 (August 13, 2021), 86 FR 46726. The Commission received one comment letter on that proposal. Comment on SR–EMERALD–2021–25 can be found at: *https://www.sec.gov/comments/sr-emerald-2021-25/sremerald202125.htm.*

[57] *See* Securities Exchange Act Release No. 93188 (September 29, 2021), 86 FR 55052.

[58] Comment on SR–EMERALD–2021–31 can be found at: *https://www.sec.gov/comments/sr-emerald-2021-31/sremerald202131.htm.*

[59] *See* Securities Exchange Act Release No. 93640, 86 FR 67745 (November 29, 2021).

[60] *See* Securities Exchange Act Release No. 93772 (December 14, 2021), 86 FR 71965.

[61] *See* Securities Exchange Act Release No. 94087, 87 FR 5918 (February 2, 2022).

[62] *See* Securities Exchange Act Release No. 94260, 87 FR 9695 (February 22, 2022).

[63] Comment on SR–EMERALD–2022–05 can be found at: *https://www.sec.gov/comments/sr-emerald-2022-05/sremerald202205.htm.*

[64] *See* 17 CFR 240.19b–4 (Item 3 entitled ''Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change'').

[65] *See id.*

[66] 15 U.S.C. 78f(b)(4).

[67] 15 U.S.C. 78f(b)(5).

[68] 15 U.S.C. 78f(b)(8).

[69] *See* 15 U.S.C. 78f(b)(4), (5), and (8), respectively.

[70] For purposes of temporarily suspending the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

IV. Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change

The Commission is instituting proceedings pursuant to Sections 19(b)(3)(C) [71] and 19(b)(2)(B) [72] of the Act to determine whether the Exchange's proposed rule change should be approved or disapproved. Institution of such 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 any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change to inform the Commission's analysis of whether to approve or disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[73] the Commission is providing notice of the grounds for possible disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of whether the Exchange has sufficiently demonstrated how the proposed rule change is consistent with Sections 6(b)(4),[74] 6(b)(5),[75] and 6(b)(8) [76] of the Act. Section 6(b)(4) of the Act requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. Section 6(b)(5) of the Act requires that the rules of a national securities exchange be designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Section 6(b)(8) of the Act requires that the rules of a national securities exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment on the following aspects of the proposal and asks commenters to submit data where appropriate to support their views:

1. *Cost Estimates and Allocation.* The Exchange states that it is not asserting that the proposed fees are constrained by competitive forces. Rather, the Exchange states that its proposed fees are based on a "cost-plus model," employing a "conservative approach," and that the $1,394,961 estimated total annual expense (comprised of $64,417 in allocated third-party expenses, $1,008,736 in allocated internal expenses, and $321,808 in allocated general shared expenses) is "directly related to the access to the Exchange's System Networks via Limited Service MEI Ports and not any other product or service offered by the Exchange." [77] *With respect to third-party and internal expenses:* Do commenters believe that the Exchange provided sufficient detail about how it determined which sub-categories of third-party and internal expenses are directly related to Limited Service MEI Ports? Should the Exchange be required to identify the sub-categories of expenses that it deemed *not* to be directly related to Limited Service MEI Ports? Do commenters believe that the Exchange provided sufficient detail about how it determined what percentage or portion of each such sub-category's total annual expense should be allocated as actually supporting access to the Exchange's Systems Networks via Limited Service MEI Ports? The Exchange provided *either* the percentage *or* the portion of a sub-category's total annual expense that it allocated as supporting access to the Exchange's Systems Networks via Limited Service MEI Ports, but not both. Nor did the Exchange provide the total annual expense for each sub-category to which these percentages or portions apply. Do commenters believe that the Exchange provided sufficient context to permit an independent review and assessment of the reasonableness of the selected percentages/portions allocated to Limited Service MEI Ports? Do commenters believe the percentages/portions allocated to Limited Service MEI Ports are reasonable? *With respect to general shared expenses:* Do commenters believe that the Exchange provided sufficient detail about the components of general shared expenses, and why a portion of general shared expenses should be allocated to Limited Service MEI Ports? Do commenters believe that the Exchange provided sufficient detail about how it determined to allocate $321,808 of general shared expenses to Limited Service MEI Ports? Do commenters believe that the Exchange provided sufficient context to permit an independent review and assessment of the reasonableness of this allocation? Do commenters believe that the allocation is reasonable? *In general:* Do commenters believe that the Exchange provided sufficient detail or explanation to support its claim that "no expense amount is allocated twice," [78] whether *among* the sub-categories of expenses in this filing, *across* the Exchange's fee filings for other products or services, or *over time*? Do commenters believe that the costs projected for 2022 are generally representative of expected costs going forward, or should an exchange present an estimated range of costs with an explanation of how profit margins could vary along the range of estimated costs?

2. *Revenue Estimates and Profit Margin Range.* The Exchange uses a single monthly revenue figure (April 2022) as the basis for calculating its projected profit margin of 48%. The Exchange argues that projecting revenues on a per month basis is reasonable "as the revenue generated from access services subject to the proposed fee generally remains static from month to month." [79] Yet the Exchange also acknowledges that "profit margin may also fluctuate from month to month based on the uncertainty of predicting how many ports may be purchased from month to month as Members are free to add and drop ports at any time based on their own business decisions." [80] Do commenters believe a single month provides a reasonable basis for a revenue projection? If not, why not? Should the Exchange provide a range of profit margins that it believes are reasonably possible, and the reasons therefor? The Exchange also provided its baseline by analyzing March 2022, the monthly billing cycle prior to the proposed fees. Do commenters believe

[71] 15 U.S.C. 78s(b)(3)(C). Once the Commission temporarily suspends a proposed rule change, Section 19(b)(3)(C) of the Act requires that the Commission institute proceedings under Section 19(b)(2)(B) to determine whether a proposed rule change should be approved or disapproved.

[72] 15 U.S.C. 78s(b)(2)(B).

[73] 15 U.S.C. 78s(b)(2)(B). Section 19(b)(2)(B) of the Act also provides that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. *See id.* The time for conclusion of the proceedings may be extended for up to 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding, or if the exchange consents to the longer period. *See id.*

[74] 15 U.S.C. 78f(b)(4).

[75] 15 U.S.C. 78f(b)(5).

[76] 15 U.S.C. 78f(b)(8).

[77] *See supra* Section II.A.2.

[78] *See id.*

[79] *See id.*

[80] *See id.*

that March 2022 is an appropriate month for a baseline, given that the proposed fees were first introduced in August 2021?

3. *Reasonable Rate of Return.* The Exchange states that its proposed fees are ''designed to cover its costs with a limited return in excess of such costs.'' [81] The Exchange offers several justifications for why its 48% estimated profit margin is not a supra-competitive profit, including: (a) When it launched operations in 2019, it chose to forgo revenue by offering certain products, such as Limited Service MEI Ports, at lower rates than other options exchanges to attract order flow; (b) the Exchange has been successful in controlling its costs; (c) a profit margin should not be judged alone based on its size, but on whether the ultimate fee reflects the value of the services provided, and Exchange offers a premium System Network, System Networks connectivity, and a highly deterministic trading environment; (d) the Exchange's proposed fees remain less than fees charged for similar port access provided by other options exchanges with similar market share; and (e) this is a singular potential profit margin from a single revenue source, and is not reflective of the Exchange's overall profit margin.[82] Do commenters agree with the Exchange that its estimated 48% profit margin would constitute a reasonable rate of return over costs for additional Limited Service MEI Ports? If not, what would commenters consider to be a reasonable rate of return and/or what factors would they consider to be appropriate for determining whether a rate of return is reasonable? Should an assessment of reasonable rate of return include consideration of factors other than costs; and if so, what factors should be considered, and why?

4. *Periodic Reevaluation.* In light of the impact that the number of ports purchased has on profit margins, and the potential for costs to decrease (or increase) over time, what are commenters' views on the need for exchanges to commit to reevaluate, on an ongoing and periodic basis, their cost-based connectivity fees to ensure that the fees stay in line with their stated profitability projections and do not become unreasonable over time, for example, by failing to adjust for efficiency gains, cost increases or decreases, and changes in subscribers? How formal should that process be, how often should that reevaluation occur, and what metrics and thresholds should be considered? How soon after a new connectivity fee change is implemented should an exchange assess whether its revenue and/or cost estimates were accurate and at what threshold should an exchange commit to file a fee change if its estimates were inaccurate? Should an initial review take place within the first 30 days after a connectivity fee is implemented? 60 days? 90 days? Some other period?

5. *Tiered Structure for Additional Limited Service MEI Ports.* The Exchange states that the proposed tiered fee structure is equitably allocated among users of the network connectivity alternatives, because users of Limited Service MEI Ports ''consume the most bandwidth and resources of the network.'' [83] The Exchange states that users of the ''maximum amount of Limited Service MEI Ports'' account for approximately greater than 99% of message traffic over the network (approximately 3 billion messages per day handled by the Exchange), while users of ''fewer Limited Service MEI Ports'' account for approximately less than 1% of message traffic over the network (users of the two free Limited Service MEI Ports generate approximately 500,000 messages per day).[84] According to the Exchange, these billions of messages per day consume the Exchange's resources and significantly contribute to the overall network connectivity expense for storage and network transport capabilities. Given this difference in network utilization rate, the Exchange believes that its tiered structure is reasonable, equitable, and not unfairly discriminatory.[85] Do commenters believe that the fees for each tier (including the intermediary tiers), as well as the fee differences between the tiers, are supported by the Exchange's assertions? If not, what information do commenters believe would better substantiate, by tier, the demands on the Exchange's resources as a firm increases the number of additional Limited Service MEI Ports that it purchases?

Under the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the [SRO] that proposed the rule change.'' [86] The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,[87] and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.[88] Moreover, ''unquestioning reliance'' on an SRO's representations in a proposed rule change would not be sufficient to justify Commission approval of a proposed rule change.[89]

The Commission believes it is appropriate to institute proceedings to allow for additional consideration and comment on the issues raised herein, including as to whether the proposal is consistent with the Act, any potential comments or supplemental information provided by the Exchange, and any additional independent analysis by the Commission.

V. Commission's Solicitation of Comments

The Commission requests written views, data, and arguments with respect to the concerns identified above as well as any other relevant concerns. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Sections 6(b)(4), 6(b)(5), and 6(b)(8), or any other provision of the Act, or the rules and regulations thereunder. The Commission asks that commenters address the sufficiency and merit of the Exchange's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change. 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.[90]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or

[81] *See id.*

[82] *See id.*

[83] *See id.*

[84] *See id.*

[85] *See id.*

[86] 17 CFR 201.700(b)(3).

[87] *See id.*

[88] *See id.*

[89] *See Susquehanna Int'l Group, LLP* v. *Securities and Exchange Commission,* 866 F.3d 442, 446–47 (D.C. Cir. 2017) (rejecting the Commission's reliance on an SRO's own determinations without sufficient evidence of the basis for such determinations).

[90] 15 U.S.C. 78s(b)(2). Section 19(b)(2) of the Act 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 an SRO. *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).

disapproved by May 11, 2022. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by May 25, 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–EMERALD–2022–15 on the subject line.

Paper Comments

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

All submissions should refer to File No. SR–EMERALD–2022–15. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*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 publ. All submissions should refer to File No. SR–EMERALD–2022–15 and should be submitted on or before May 11, 2022. Rebuttal comments should be submitted by May 25, 2022.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(3)(C) of the Act,[91] that File No. SR–EMERALD–2022–15 be, and hereby is, temporarily suspended. In addition, the Commission is instituting proceedings to determine whether the proposed rule change should be approved or disapproved.

[91] 15 U.S.C. 78s(b)(3)(C).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[92]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–08382 Filed 4–19–22; 8:45 am]

BILLING CODE 8011–01–P

[92] 17 CFR 200.30–3(a)(12), (57) and (58).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–603; OMB Control No. 3235–0658]

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:
Rule 22e–3

Notice is hereby given that, under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Section 22(e) of the Investment Company Act [15 U.S.C. 80a–22(e)] (''Act'') generally prohibits funds, including money market funds, from suspending the right of redemption, and from postponing the payment or satisfaction upon redemption of any redeemable security for more than seven days. The provision was designed to prevent funds and their investment advisers from interfering with the redemption rights of shareholders for improper purposes, such as the preservation of management fees. Although section 22(e) permits funds to postpone the date of payment or satisfaction upon redemption for up to seven days, it does not permit funds to suspend the right of redemption for any amount of time, absent certain specified circumstances or a Commission order.

Rule 22e–3 under the Act [17 CFR 270.22e–3] exempts money market funds from section 22(e) to permit them to suspend redemptions in order to facilitate an orderly liquidation of the fund. Specifically, rule 22e–3 permits a money market fund to suspend redemptions and postpone the payment of proceeds pending board-approved liquidation proceedings if: (i) The fund's board of directors, including a majority of disinterested directors, determines pursuant to § 270.2a–7(c)(8)(ii)(C) that the extent of the deviation between the fund's amortized cost price per share and its current net asset value per share calculated using available market quotations (or an appropriate substitute that reflects current market conditions) may result in material dilution or other unfair results to investors or existing shareholders; (ii) the fund's board of directors, including a majority of disinterested directors, irrevocably approves the liquidation of the fund; and (iii) the fund, prior to suspending redemptions, notifies the Commission of its decision to liquidate and suspend redemptions. Rule 22e–3 also provides an exemption from section 22(e) for registered investment companies that own shares of a money market fund pursuant to section 12(d)(1)(E) of the Act (''conduit funds''), if the underlying money market fund has suspended redemptions pursuant to the rule. A conduit fund that suspends redemptions in reliance on the exemption provided by rule 22e–3 is required to provide prompt notice of the suspension of redemptions to the Commission. Notices required by the rule must be provided by electronic mail, directed to the attention of the Director of the Division of Investment Management or the Director's designee.[1] Compliance with the notification requirement is mandatory for money market funds and conduit funds that rely on rule 22e–3 to suspend redemptions and postpone payment of proceeds pending a liquidation, and are not kept confidential.

Commission staff estimates that, on average, one fund would be required to make the required notice every year.[2] Commission staff further estimates that a money market fund or conduit fund would spend approximately one hour of an in-house attorney's time to prepare and submit the notice required by the rule. Given these estimates, the total annual burden of the notification requirement of rule 22e–3 for all money market funds and conduit funds would be approximately one hour at a cost of $425.[3] The Commission staff estimates

[1] *See* rule 22e–3(a)(3).

[2] The Commission has not received any notices invoking rule 22e–3 to halt redemptions. However, for administrative purposes, we are reporting one respondent and one annual response.

[3] This figure for an Attorney is from SIFMA's *Management & Professional Earnings in the Securities Industry 2013,* modified by Commission staff to account for an 1800-hour work-year and

Continued