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For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>27</sup>

**Sherry R. Hayward,**  
Assistant Secretary.

[FR Doc. 2023-21948 Filed 10-3-23; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98658; File No. SR-PEARL-2023-35]

### Self-Regulatory Organizations; MIAX PEARL, LLC; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Change To Amend the Fee Schedule To Modify Certain Connectivity and Port Fees

September 29, 2023.

#### I. Introduction

On August 8, 2023, MIAX PEARL LLC (“MIAX Pearl Options” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change (File No. SR-PEARL-2023-35) to amend certain connectivity and port fees. The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.<sup>3</sup> The proposed

rule change was published for comment in the **Federal Register** on August 25, 2023.<sup>4</sup> Pursuant to Section 19(b)(3)(C) of the Act,<sup>5</sup> the Commission is hereby: (1) temporarily suspending the proposed rule change; and (2) instituting proceedings to determine whether to approve or disapprove the proposed rule change.

#### II. Background and Description of the Proposed Rule Change

As described in more detail in the Notice, the Exchange proposes to: (1) increase fees for a 10 gigabit (“Gb”) ultra-low latency (“ULL”) fiber connection for Members<sup>6</sup> and non-Members from \$10,000 to \$13,500 per month;<sup>7</sup> (2) remove provisions in the Exchange's Fee Schedule that provide for a shared 10Gb ULL network with the Exchange's affiliate Miami International Securities Exchange, LLC (“MIAX”);<sup>8</sup> and (3) amend the calculation method and increase the amount of fees for MIAX Express Network Full Service<sup>9</sup> (“MEO”) Ports.<sup>10</sup>

or not the person is a member of the self-regulatory organization.” 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>4</sup> See Securities Exchange Act Release No. 98180 (August 21, 2023), 88 FR 58404 (SR-PEARL-2023-35) (“Notice”). Comment on the proposed rule change can be found at: <https://www.sec.gov/comments/sr-pearl-2023-35/srpearl202335.htm>.

<sup>5</sup> 15 U.S.C. 78s(b)(3)(C).

<sup>6</sup> The term “Member” means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed “members” under the Exchange Act. See Exchange Rule 100.

<sup>7</sup> See Notice, *supra* note 4, at 58408.

<sup>8</sup> On January 23, 2023, the Exchange bifurcated the Exchange and MIAX's 10Gb ULL network and stated that this bifurcation was due to ever-increasing capacity constraints and anticipated access needs for Members and market participants. See Securities Exchange Act Release Nos. 96545 (December 20, 2022), 87 FR 79393 (December 27, 2022) (SR-MIAX-2022-48); and 96553 (December 20, 2022), 87 FR 79379 (December 27, 2022) (SR-PEARL-2022-60). The instant filing would amend provisions in the Fee Schedule to reflect the bifurcation of the 10Gb ULL network and specify that only the 1Gb network provides access to both the Exchange and MIAX. See Notice, *supra* note 4, at 58408.

<sup>9</sup> The term “MEO Interface” or “MEO” means a binary order interface for certain order types as set forth in Rule 516 into the MIAX Pearl System. See the Definitions Section of the Exchange Fee Schedule and Exchange Rule 100.

<sup>10</sup> See Notice, *supra* note 4, at 58409-10. The Exchange initially filed the proposed fee change on December 30, 2022, with an effective date of January 1, 2023. See Securities Exchange Act Release No. 96632 (January 10, 2023), 88 FR 2707 (January 17, 2023) (SR-PEARL-2022-62). That filing was withdrawn by the Exchange and the Exchange filed a new proposed fee change with additional justification (SR-PEARL-2023-05) on February 23, 2023. See Securities Exchange Act Release No. 97082 (March 8, 2023), 88 FR 15825 (March 14, 2023). The Exchange subsequently withdrew that filing and replaced it with SR-PEARL-2023-19 on April 20, 2023. See Securities Exchange Act Release No. 97420 (May 2, 2023), 88 FR 29701 (May 8, 2023). The Exchange

The Exchange currently offers two types of Full Service MEO Ports—Bulk<sup>11</sup> and Single<sup>12</sup>—and, for one monthly price, a Member may be allocated two Full-Service MEO Ports of either type per Matching Engine.<sup>13</sup> The Exchange now proposes to modify both the calculation method and amount of fees for each type of Full Service MEO Port.<sup>14</sup> Notwithstanding these changes to the calculation method and amount of fees, all Members will continue to be entitled to two Full Service MEO Ports (Bulk or Single) for each Matching Engine for the applicable fee.<sup>15</sup>

With respect to the Full Service MEO Ports (Bulk), prior to the proposed fee change, all Members were charged a monthly fee pursuant to a volume tier-based fee structure with fees ranging from \$3,000 to \$5,000.<sup>16</sup> The Exchange now proposes to amend the calculation and amount of Full Service MEO Port (Bulk) fees for all Members, with different fee structures depending on whether the Member is a Market Maker<sup>17</sup> or an Electronic Exchange Member (“EEM”).<sup>18</sup> The Exchange proposes to charge all EEMs that utilize MIAX Pearl Full Service MEO Ports (Bulk) a flat monthly fee of \$7,500.<sup>19</sup> For Market Makers, the Exchange proposes

subsequently withdrew that filing and replaced it with SR-PEARL-2023-27 on June 16, 2023. See Securities Exchange Act Release No. 97815 (June 27, 2023), 88 FR 42759 (July 3, 2023). The Exchange subsequently withdrew that filing and replaced it with the instant filing to provide additional information and a revised justification for the proposal, which is discussed herein. See Notice, *supra* note 4, at 58405.

<sup>11</sup> Full Service MEO Port (Bulk) means an MEO port that supports all MEO input message types and binary bulk order entry. See the Definitions Section of the Exchange Fee Schedule.

<sup>12</sup> Full Service MEO Port (Single) means an MEO port that supports all MEO input message types and binary order entry on a single order-by-order basis, but not bulk orders. See the Definitions Section of the Exchange Fee Schedule.

<sup>13</sup> See Notice, *supra* note 4, at 58409. A “Matching Engine” is a part of the Exchange's electronic system that processes options orders and trades on a symbol-by-symbol basis. See the Definitions Section of the Fee Schedule.

<sup>14</sup> See *id.*

<sup>15</sup> See *id.* at 58409, 58411.

<sup>16</sup> See *id.* at 58409.

<sup>17</sup> The term “Market Maker” means a Member registered with the Exchange for the purpose of making markets in options contracts traded on the Exchange and that is vested with the rights and responsibilities specified in Chapter VI of Exchange Rules. See the Definitions Section of the Exchange Fee Schedule and Exchange Rule 100.

<sup>18</sup> See Notice, *supra* note 4, at 58409. The term “Electronic Exchange Member” or “EEM” means the holder of a Trading Permit who is a Member representing as agent Public Customer Orders or Non-Customer Orders on the Exchange and those non-Market Maker Members conducting proprietary trading. Electronic Exchange Members are deemed “members” under the Exchange Act. See the Definitions Section of the Exchange Fee Schedule and Exchange Rule 100.

<sup>19</sup> See Notice, *supra* note 4, at 58409.

<sup>27</sup> 17 CFR 200.30-3(a)(57).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A). A proposed rule change may take effect upon filing with the Commission if it is designated by the exchange as “establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether

that the amount of the monthly Full Service MEO Ports (Bulk) fee would be based on the lesser of either the per class traded or percentage of total national average daily volume (“ADV”) measurement based on classes traded by volume.<sup>20</sup>

Specifically, the Exchange proposes to adopt the following Full Service MEO Port (Bulk) fees for Market Makers: (i) \$5,000 for Market Maker registrations in up to 10 option classes or up to 20% of option classes by national ADV; (ii) \$7,500 for Market Maker registrations in up to 40 option classes or up to 35% of option classes by ADV; (iii) \$10,000 for Market Maker registrations in up to 100 option classes or up to 50% of option classes by ADV; and (iv) \$12,000 for Market Maker registrations in over 100 option classes or over 50% of option classes by ADV up to all option classes listed on MIAAX Pearl.<sup>21</sup> In addition, the Exchange proposes to adopt an alternative lower Full Service MEO Port (Bulk) fee for Market Makers who fall within the second, third, and fourth levels of the proposed Market Maker Full Service MEO Port (Bulk) fee table—*i.e.*, (i) Market Maker registrations in up to 40 option classes or up to 35% of option classes by volume; (ii) Market Maker registrations in up to 100 option classes or up to 50% of option classes by volume; and (iii) Market Maker registrations in over 100 option classes or over 50% of option classes by volume up to all option classes listed on MIAAX Pearl Options.<sup>22</sup> For these Market Makers, if the Market Maker’s total monthly executed volume during the relevant month is less than 0.040% of the total monthly TCV<sup>23</sup> for MIAAX Pearl-listed option classes for that month, then the fee will be \$6,000 instead of the fee otherwise applicable to such level.<sup>24</sup>

<sup>20</sup> The amount of monthly Market Maker Full Service MEO Port (Bulk) fee would be based upon the number of classes in which the Market Maker was registered to quote on any given day within the calendar month, or upon the class volume percentages. The Exchange states that this change in how Full Service MEO Port (Bulk) will be calculated is identical to how the Exchange assesses Market Makers Trading Permit fees. *See* Notice, *supra* note 4, at 58409.

<sup>21</sup> *See id.* at 58409–10. For additional information on how these fees will be calculated please see the Notice.

<sup>22</sup> *See id.* at 58410.

<sup>23</sup> “TCV” means total consolidated volume calculated as the total national volume in those classes listed on MIAAX Pearl for the month for which the fees apply, excluding consolidated volume executed during the period of time in which the Exchange experiences an Exchange System Disruption (solely in the option classes of the affected Matching Engine). *See* the Definitions Section of the Fee Schedule.

<sup>24</sup> *See* Notice, *supra* note 4, at 58410.

With respect to the Full Service MEO Ports (Single), prior to the proposed fee change, all Members were charged a monthly fee pursuant to a volume tier-based fee structure with fees ranging from \$2,000 to \$3,750.<sup>25</sup> The Exchange now proposes to charge all Members that utilize Full Service MEO Ports (Single) a flat monthly fee of \$4,000.<sup>26</sup>

### III. Suspension of the Proposed Rule Change

Pursuant to Section 19(b)(3)(C) of the Act,<sup>27</sup> at any time within 60 days of the date of filing of an immediately effective proposed rule change pursuant to Section 19(b)(1) of the Act,<sup>28</sup> 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. 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.

In support of the proposal, the Exchange states its belief that the proposed fees overall are reasonable because they promote parity among exchange pricing for access, which promotes competition, while allowing the Exchange to recover its costs to provide dedicated access via 10Gb ULL connectivity and Full Service MEO Ports.<sup>29</sup> The Exchange further states that the proposed fees are fair and reasonable because they will not result in pricing that deviates from that of other exchanges or a “supra-competitive profit,” when comparing the total expense of the Exchange associated with providing 10Gb ULL connectivity and Full Service MEO Port services versus the total projected revenue of the Exchange associated with these services.<sup>30</sup> According to the Exchange, employing a methodology that is the “result of an extensive review and analysis,” it estimates the total projected annual cost of providing 10Gb ULL connectivity to be \$11,567,509 and for providing Full Service MEO Ports to be \$1,644,132.<sup>31</sup>

<sup>25</sup> *See id.*

<sup>26</sup> *See id.* at 58411.

<sup>27</sup> 15 U.S.C. 78s(b)(3)(C).

<sup>28</sup> 15 U.S.C. 78s(b)(1).

<sup>29</sup> *See* Notice, *supra* note 4, at 58412.

<sup>30</sup> *See id.* at 58425.

<sup>31</sup> *See id.* at 58417, 58418. The Exchange states that its cost analysis is based on the Exchange’s

To arrive at these figures, the Exchange states that it undertook an extensive cost analysis to analyze every expense in the Exchange’s general expense ledger to determine whether each such expense related to the provision of connectivity and port services, and, if such expense did so relate, what portion (or percentage) of such expense supported the provision of connectivity and port services.<sup>32</sup> The Exchange states that it determined the total cost for the Exchange and its affiliated markets for each cost driver<sup>33</sup> through a company-wide process that included discussions with senior management, Exchange department heads, and the Finance Team.<sup>34</sup> The Exchange further states that it determined what portion of the cost allocated to the Exchange pursuant to this methodology is to be allocated to each core service, including the appropriate allocation to connectivity and ports.<sup>35</sup> The Exchange states that through this allocation methodology, the Exchange “applied an allocation of each cost driver to each core service” and “[e]ach of the [resulting] cost allocations is unique to the Exchange and represents a percentage of overall cost that was allocation to the Exchange pursuant to the initial allocation.”<sup>36</sup>

The Exchange states that the \$11,567,509 aggregate annual costs for providing physical dedicated 10Gb ULL connectivity via an unshared network is the sum of the following individual line-item costs: (1) Human Resources at \$3,675,098; (2) Connectivity (external fees, cabling, switches, etc.) at \$70,163; (3) internet Services and External Market Data at \$322,388; (4) Data Center

2023 fiscal year of operations and projections. *See id.* at 58425.

<sup>32</sup> *See id.* at 58418.

<sup>33</sup> The Exchange defines “cost drivers” within the filing as the costs necessary to deliver each of the core services, including infrastructure, software, human resources (*i.e.*, personnel), and certain general and administrative expenses. *See* Notice, *supra* note 4, at 58417.

<sup>34</sup> *See* Notice, *supra* note 4, at 58417. The Exchange states that because the Exchange’s parent company currently owns and operates four separate and distinct marketplaces, the Exchange’s parent company determines an accurate cost for each marketplace, which results in different allocations and amounts across exchanges for the same cost drivers. *See id.* at 58418. According to the Exchange, its allocation methodology ensures that no cost would be allocated twice or double-counted between the Exchange and its affiliated markets. *See id.*

<sup>35</sup> *See id.* The Exchange describes “core services” as services provided by the Exchange, including transaction execution, market data, membership services, physical connectivity, and port access (which provides order entry, cancellation and modification functionality, risk functionality, the ability to receive drop copies, and other functionality). *See id.* at 58417.

<sup>36</sup> *Id.* at 58418.

at \$739,983; (5) Hardware and Software Maintenance and Licenses at \$959,157; (6) Depreciation at \$1,885,969; and (7) Allocated Shared Expenses at \$3,914,751.<sup>37</sup> The Exchange represents that it estimates that the proposed fees will result in an annual revenue of approximately \$17,496,000, which is a potential profit margin of 34% over the cost of providing 10Gb ULL connectivity services.<sup>38</sup>

The Exchange states that the \$1,644,132 aggregate annual costs for offering Full Service MEO Ports is the sum of the following individual line-item costs: (1) Human Resources at \$1,159,831; (2) Connectivity (external fees, cabling, switches, etc.) at \$1,589; (3) internet Services and External Market Data at \$6,033; (4) Data Center at \$41,881; (5) Hardware and Software Maintenance and Licenses at \$22,438; (6) Depreciation at \$127,986; and (7) Allocated Shared Expenses at \$284,374.<sup>39</sup> The Exchange represents that it estimates that the proposed fees will result in an annual revenue of approximately \$1,644,000, which would result in a small negative profit margin after the cost of providing Full Service MEO Port services.<sup>40</sup>

The Exchange states its belief that the proposed fees are reasonable because they allow the Exchange to “recoup the Exchange’s costs of providing dedicated 10Gb ULL connectivity and Full Service MEO Ports” and that the cost analysis and related projections demonstrate that the Exchange is not earning “supra-competitive profits.”<sup>41</sup> In addition, the Exchange states that the proposed fees are comparable to or lower than the fees charged by competing options exchanges for similar products.<sup>42</sup>

In further support of the proposal, the Exchange states its belief that the proposed fees are reasonable, fair, equitable, and not unfairly discriminatory, because they are designed to align fees with services provided and will apply equally to all subscribers.<sup>43</sup> Moreover, the Exchange asserts that the proposed fees are equitably allocated among users of the network connectivity and port alternatives, as the “users of 10Gb ULL connections consume substantially more bandwidth and network resources than the users of 1Gb ULL connection.”<sup>44</sup> The Exchange also states that with respect to Full Service MEO

Ports, Members that are frequently in the highest tier for Full Service MEO Ports consume the most bandwidth and resources of the network.<sup>45</sup>

Finally, the Exchange asserts that the proposed fees would not cause any unnecessary or inappropriate burden on inter-market competition because if the fee is set too high it would make it easier for other exchanges to compete with the Exchange, and only if the proposed fees were a “substantial fee decrease could this be considered a form of predatory pricing.”<sup>46</sup> Furthermore, the Exchange asserts that the proposed fee change for 10Gb ULL connectivity is a “technology driven change designed to meet customer needs” and that separating the 10Gb ULL network from MIAAX enables the Exchange to “better compete with other exchanges” by continuing to provide adequate connectivity to current and new Members, which “may increase [its] ability to compete for order flow and deepen its liquidity pool, improving the overall quality of its market.”<sup>47</sup> The Exchange also asserts that the proposed rule change would not cause any unnecessary or inappropriate burden on intra-market competition because the proposed fees will allow the Exchange to recoup some of its costs in providing 10Gb ULL connectivity and Full Service MEO Ports at below market rates since the Exchange launched operations.<sup>48</sup>

To date, the Commission has received one comment letter on the revised justifications for the proposed increase in fees for 10Gb ULL connectivity and Full Service MEO Ports.<sup>49</sup> This commenter states that the revisions reflected in the Exchange’s instant proposal as compared to its earlier filings “do[] not fundamentally redress the valid critiques that SIG raised in its prior letters objecting to the subject fee increases.”<sup>50</sup>

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.<sup>51</sup> 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.”<sup>52</sup>

Section 6 of the Act, including Sections 6(b)(4), (5), and (8), require 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;<sup>53</sup> (2) perfect the mechanism of a free and open market and a national market system, protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers;<sup>54</sup> and (3) not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.<sup>55</sup>

In temporarily suspending the Exchange’s proposed rule change, the Commission intends to further consider whether the proposal to increase fees for 10Gb ULL connectivity (to be provided via an unshared network) and modify the pricing structure for Full Service MEO Ports is 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 permit unfair discrimination between customers, issuers, brokers or dealers; and do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.<sup>56</sup>

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.<sup>57</sup>

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

In addition to temporarily suspending the proposal, the Commission also

<sup>45</sup> *Id.*

<sup>46</sup> *Id.* at 58428.

<sup>47</sup> *Id.* at 58428–29.

<sup>48</sup> *See id.* at 58428.

<sup>49</sup> *See* Letter from Gerald D. O’Connell, Executive Director, Susquehanna International Group, LLP, to Vanessa Countryman, Secretary, Commission, dated September 18, 2023 (“SIG Letter”).

<sup>50</sup> *Id.*

<sup>51</sup> *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”).

<sup>52</sup> *See id.*

<sup>53</sup> 15 U.S.C. 78f(b)(4).

<sup>54</sup> 15 U.S.C. 78f(b)(5).

<sup>55</sup> 15 U.S.C. 78f(b)(8).

<sup>56</sup> *See* 15 U.S.C. 78f(b)(4), (5), and (8), respectively.

<sup>57</sup> 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).

<sup>37</sup> *See id.* at 58419.

<sup>38</sup> *See id.* at 58425.

<sup>39</sup> *See* Notice, *supra* note 4, at 58422.

<sup>40</sup> *See id.* at 58425.

<sup>41</sup> *Id.* at 58426.

<sup>42</sup> *See id.*

<sup>43</sup> *See id.* at 58427.

<sup>44</sup> *Id.*

hereby institutes proceedings pursuant to Sections 19(b)(3)(C)<sup>58</sup> and 19(b)(2)(B) of the Act<sup>59</sup> to determine whether the Exchange's proposed rule change should be approved or disapproved. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to provide additional comment 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,<sup>60</sup> the Commission is providing notice of the grounds for possible disapproval under consideration:

- Whether the Exchange has demonstrated how the proposed fees are consistent with Section 6(b)(4) of the Act, which 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;"<sup>61</sup>

- Whether the Exchange has demonstrated how the proposed fees are consistent with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange not be "designed to permit unfair discrimination between customers, issuers, brokers, or dealers;"<sup>62</sup> and

- Whether the Exchange has demonstrated how the proposed fees are consistent with Section 6(b)(8) of the Act, which requires that the rules of a national securities exchange "not impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Act]."<sup>63</sup>

As discussed in Section III above, the Exchange made various arguments in support of its proposal. The Commission believes that there are questions as to whether the Exchange

has provided sufficient information to demonstrate that the proposed fees are consistent with the Act and the rules thereunder.

Under the Commission's Rules of Practice, the "burden to demonstrate that a proposed rule change is consistent with the [Act] and the rules and regulations issued thereunder . . . is on the [SRO] that proposed the rule change."<sup>64</sup> 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,<sup>65</sup> 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.<sup>66</sup>

The Commission is instituting proceedings to allow for additional consideration and comment on the issues raised herein, including as to whether the proposed fees are consistent with the Act, and specifically, with its requirements that exchange fees be reasonable and equitably allocated, not be unfairly discriminatory, and not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.<sup>67</sup>

#### 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. Such comments should be submitted by October 25, 2023. Rebuttal comments should be submitted by November 8, 2023. 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.<sup>68</sup>

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.

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

#### Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-PEARL-2023-35 on the subject line.

#### Paper Comments

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

All submissions should refer to file number SR-PEARL-2023-35. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-PEARL-2023-35 and should be submitted on or before October 25, 2023. Rebuttal comments should be submitted by November 8, 2023.

<sup>58</sup> 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.

<sup>59</sup> 15 U.S.C. 78f(b)(5).

<sup>60</sup> *Id.* 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.*

<sup>61</sup> 15 U.S.C. 78f(b)(4).

<sup>62</sup> 15 U.S.C. 78f(b)(5).

<sup>63</sup> 15 U.S.C. 78f(b)(8).

<sup>64</sup> 17 CFR 201.700(b)(3).

<sup>65</sup> *See id.*

<sup>66</sup> *See id.*

<sup>67</sup> *See* 15 U.S.C. 78f(b)(4), (5), and (8).

<sup>68</sup> 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).

## VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(3)(C) of the Act,<sup>69</sup> that File No. SR–PEARL–2023–35, 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.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>70</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2023–22034 Filed 10–3–23; 8:45 am]

BILLING CODE 8011–01–P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98653; File No. SR–CboeEDGX–2023–057]

### Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Change To Amend its Fee Schedule Related to Physical Port Fees

September 29, 2023.

#### I. Introduction

On September 1, 2023, Cboe EDGX Exchange, Inc. (the “Exchange” or “EDGX”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> a proposed rule change (File Number SR–CboeEDGX–2023–057) to amend its fee schedule to increase the monthly fee for 10 gigabit (“Gb”) physical ports. The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.<sup>3</sup> The proposed rule change was published for comment in the **Federal Register** on September 20, 2023.<sup>4</sup> Pursuant to Section 19(b)(3)(C) of the Act,<sup>5</sup> the Commission is hereby: (1) temporarily suspending the proposed rule change; and (2)

instituting proceedings to determine whether to approve or disapprove the proposed rule change.

#### II. Background and Description of the Proposed Rule Change

The Exchange proposes to amend its fee schedule for its equities platform (“EDGX Equities”) relating to physical connectivity fees. The Exchange proposes to increase the monthly fee for 10 Gb physical ports from \$7,500 to \$8,500 per port. The Exchange currently assesses the following physical connectivity fees for Members<sup>6</sup> and non-Members on a monthly basis: \$2,500 per physical port for a 1 Gb circuit and \$7,500 per physical port for a 10 Gb circuit.<sup>7</sup> According to the Exchange, the physical ports may also be used to access the systems for the following affiliate exchanges and only one monthly fee currently (and will continue) to apply per port: the Exchange’s options platform (EDGX Options), Cboe BZX Exchange, Inc. (options and equities platforms), Cboe BYX Exchange, Inc., Cboe EDGA Exchange, Inc., and Cboe C2 Exchange, Inc.

#### III. Suspension of the Proposed Rule Change

Pursuant to Section 19(b)(3)(C) of the Act,<sup>8</sup> at any time within 60 days of the date of filing of an immediately effective proposed rule change pursuant to Section 19(b)(1) of the Act,<sup>9</sup> 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. 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.

In support of the proposal, the Exchange states its belief that the proposed fee change is reasonable as it reflects a moderate increase in physical connectivity fees for 10 Gb physical ports.<sup>10</sup> The Exchange states that the

current 10 Gb physical port fee has remained unchanged since June 2018.<sup>11</sup> The Exchange states that during this 5-year span there has been an average inflation rate of 3.9%, producing a cumulative price increase of approximately 21.1% inflation since the fee for the 10 Gb physical port was last modified.<sup>12</sup> In support of its claim of reasonableness, the Exchange compares its proposed rate increase from the rates adopted five years ago of approximately 13% to the cumulative inflation rate of 21.1%.<sup>13</sup>

In further support of the proposal, the Exchange states that the proposed fee is reasonable, fair, and equitable, and not unfairly discriminatory.<sup>14</sup> The Exchange believes that the proposed fee is reasonable as it is still in line with, or even lower than, amounts assessed by other exchanges for similar connections.<sup>15</sup> The Exchange also states its belief that the fee is not unfairly discriminatory, because the fee would be assessed uniformly across all market participants that purchase the physical ports.<sup>16</sup> The Exchange states that the fee is equitable because increasing the fee for 10 Gb physical ports and charging a higher fee as compared to the 1 Gb physical port as the 1 Gb physical port is 1/10 the size of the 10 Gb physical port and does not offer access to many of the products and services offered by the Exchange.<sup>17</sup> The Exchange also states its belief the proposed fee is reasonable and appropriately allocated because, the Exchange states, market participants that purchase 10 Gb physical ports use the most bandwidth and therefore consume the most resources from the network.<sup>18</sup>

In further support of its proposed fee, the Exchange states that Members and non-Members will continue to choose the method of connectivity based on their specific needs and no broker-dealer is required to become a Member of, or connect directly to, the Exchange.<sup>19</sup> The Exchange also states its belief that substitutable products and services are available to market participants, including, among other things, other equities exchanges that a market participant may connect to in lieu of the Exchange, indirect connectivity to the Exchange via a third-party reseller of connectivity, and/or trading of any equities product, such as

<sup>69</sup> 15 U.S.C. 78s(b)(3)(C).

<sup>70</sup> 17 CFR 200.30–3(a)(57).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A). A proposed rule change may take effect upon filing with the Commission if it is designated by the exchange as “establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization.” 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>4</sup> See Securities Exchange Act Release No. 98396 (September 14, 2023), 88 FR 64960 (“Notice”).

<sup>5</sup> 15 U.S.C. 78s(b)(3)(C).

<sup>6</sup> The term “Member” means any registered broker or dealer that has been admitted to membership in the Exchange. See Exchange Rule 1.5(n).

<sup>7</sup> A physical port is utilized by a Member or non-Member to connect to the Exchange at the data centers where the Exchange’s servers are located.

<sup>8</sup> 15 U.S.C. 78s(b)(3)(C).

<sup>9</sup> 15 U.S.C. 78s(b)(1).

<sup>10</sup> See Notice, *supra* note 4, at 64960.

<sup>11</sup> See *id.*

<sup>12</sup> See *id.*

<sup>13</sup> See *id.* at 64961.

<sup>14</sup> See *id.*

<sup>15</sup> See *id.*

<sup>16</sup> See *id.*

<sup>17</sup> See *id.*

<sup>18</sup> See *id.*

<sup>19</sup> See *id.*