

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * <input type="text" value="40"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input type="text" value="2018"/> - * <input type="text" value="08"/>	Amendment No. (req. for Amendments *) <input type="text"/>
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Filing by **MIAX PEARL, LLC**  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
			Rule		
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	<input type="checkbox"/> 19b-4(f)(6)
			<input checked="" type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>
	Section 3C(b)(2) * <input type="checkbox"/>

Exhibit 2 Sent As Paper Document <input checked="" type="checkbox"/>	Exhibit 3 Sent As Paper Document <input checked="" type="checkbox"/>
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**Description**

Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

Proposal to Implement an Equity Rights Program

**Contact Information**

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name \*  Last Name \*

Title \*

E-mail \*

Telephone \*  Fax

**Signature**

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title \*)

Date  Associate Counsel

By

(Name \*)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

**Form 19b-4 Information \***

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

**1. Text of the Proposed Rule Change**

(a) MIAX PEARL, LLC (“MIAX PEARL” or “Exchange”), pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> proposes to implement an equity rights program.

Notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1.

(b) Not applicable.

(c) Not applicable.

**2. Procedures of the Self-Regulatory Organization**

The proposed rule change was approved by the Chief Executive Officer of the Exchange pursuant to authority delegated by the MIAX PEARL Board of Directors on December 7, 2017. Exchange staff will advise the Board of Directors of any action taken pursuant to delegated authority. No other action by the Exchange is necessary for the filing of the proposed rule change.

Questions and comments on the proposed rule change may be directed to Joseph W. Ferraro III, Senior Vice President and Deputy General Counsel, at (609) 897-8492.

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

The Exchange proposes to implement an equity rights program (“Program”) pursuant to which units representing the right to acquire equity in the Exchange’s parent holding company, Miami International Holdings, Inc. (“MIH”) would be issued to a participating Member in

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

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

exchange for payment of an initial purchase price or the prepayment of certain ERP Exchange Fees<sup>3</sup> and the achievement of certain liquidity volume thresholds on the Exchange over a 32-month period. The purpose of the Program is to promote the long-term interests of MIAX PEARL by providing incentives designed to encourage future MIH owners and MIAX PEARL market participants to contribute to the growth and success of MIAX PEARL, by being active liquidity providers and takers to provide enhanced levels of trading volume to MIAX PEARL's market, through an opportunity to increase their proprietary interests in MIAX PEARL's enterprise value.

Members that participate in the Program will have two options to choose from: (i) an offering of I-Units; and/or (ii) an offering of J-Units.<sup>4</sup>

#### I-Units Option

Members that participate in the I-Unit option of the Program will be issued for each unit (i) 31,870 shares of MIH common stock and (ii) warrants to purchase 384,474 shares of common stock of MIH in exchange for such participant Member's initial cash capital contribution of

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<sup>3</sup> The ERP Exchange fees consist of: (a) transaction fees as set forth in Section 1)a of the MIAX PEARL Exchange Fee Schedule; (b) membership fees as set forth in Section 3 of the MIAX PEARL Exchange Fee Schedule; (c) system connectivity fees as set forth in Section 5 of the MIAX PEARL Exchange Fee Schedule; and (d) market data fees as set forth in Section 6 of the MIAX PEARL Exchange Fee Schedule (collectively, the "ERP Exchange Fees").

<sup>4</sup> The Program which provides equity-like consideration in exchange for market making or the provision of liquidity, order flow or volume is open to market participants generally. All MIAX PEARL Members may participate subject to their satisfaction of eligibility requirements. To be designated as a participant Member, an applicant must: (i) be a Member in good standing of MIAX PEARL; (ii) qualify as an "accredited investor" as such term is defined in Regulation D of the Securities Act of 1933; and (iii) have executed all required documentation for Program participation. Members may elect to participate in either or both of the options. If either the I-Unit or the J-Unit option is oversubscribed, the units in the oversubscribed option will be allocated on a pro-rata basis that may result in a fractional allocation.

\$215,122.50, and with such warrants being exercisable upon the achievement by the participating Member of certain volume thresholds on the Exchange during a 32-month measurement period commencing May 1, 2018. A total of 2 I-Units will be offered. The total equity ownership of MIH common stock held by any one participant Member will be subject to a cap of 19.9%.<sup>5</sup>

The warrants will vest in seven (7) tranches: (i) one (1) tranche, upon initial investment; and (ii) six (6) tranches during a measurement period of months 1-32 of the Program. In addition, the participant Members may earn or lose the right to exercise warrants on a pro-rata

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<sup>5</sup> See Ninth Article (b)(i)(B), Amended and Restated Certificate of Incorporation of Miami International Holdings, Inc., effective October 16, 2015 (providing that no Exchange Member, either alone or together with its Related Persons, may own, directly or indirectly, of record or beneficially, shares constituting more than twenty percent (20%) of any class of capital stock of the Corporation). See also Ninth Article (b)(i)(C), Amended and Restated Certificate of Incorporation of Miami International Holdings, Inc., effective October 16, 2015 (providing that no Person, either alone or together with its Related Persons, at any time may, directly, indirectly or pursuant to any voting trust, agreement, plan or other arrangement, vote or cause the voting of shares of the capital stock of the Corporation or give any consent or proxy with respect to shares representing more than twenty percent (20%) of the voting power of the then issued and outstanding capital stock of the Corporation, nor may any Person, either alone or together with its Related Persons, enter into any agreement, plan or other arrangement with any other Person, either alone or together with its Related Persons, under circumstances that would result in the shares of capital stock of the Corporation that are subject to such agreement, plan or other arrangement not being voted on any matter or matters or any proxy relating thereto being withheld, where the effect of such agreement, plan or other arrangement would be to enable any Person, either alone or together with its Related Persons, to vote, possess the right to vote or cause the voting of shares of the capital stock of the Corporation which would represent more than twenty percent (20%) of said voting power.). Any purported transfer of shares or ownership of shares in violation of the ownership cap by a stockholder would be subject to the limitations of the Certificate of Incorporation, including the non-recognition of voting rights of shares in excess of the cap and a redemption right by MIH for excess shares. See also Ninth Article (d) and (e), Amended and Restated Certificate of Incorporation of Miami International Holdings, Inc., effective October 16, 2015.

basis based upon meeting volume commitments during the measurement periods, as detailed below.

Upon the initial investment, the participant Member would receive common shares equal to 31,870 shares of the common stock and 10% of the warrants will vest. A participant Member will be eligible to earn the remaining warrants during measurement periods provided that the participant has achieved a specified percentage of the total national average daily volume of options contracts reported to The Options Clearing Corporation (“OCC”) (“OCC ADV”) on MIAX PEARL of all option classes listed on MIAX PEARL.<sup>6</sup>

The remaining six (6) tranches, of 90% of the warrants, will vest during the following measurement periods: (i) 5.63% of the warrants resulting from months 1-2, with a volume commitment of 0.400% of OCC ADV on MIAX PEARL per I-Unit;<sup>7</sup> (ii) 16.87% of the warrants resulting from months 3-8, with a volume commitment of 0.400% of OCC ADV on MIAX PEARL per I-Unit; (iii) 16.87% of the warrants resulting from months 9-14, with a volume commitment of 0.400% of OCC ADV on MIAX PEARL per I-Unit; (iv) 16.87% of the warrants

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<sup>6</sup> If an options class is not listed on MIAX PEARL, then the trading volume in that options class will be omitted from the calculation of % OCC ADV. Priority Customer-to-Priority Customer Crossing transactions where no fees are paid to the Exchange, special strategies, and contracts as to which a Member acts solely as clearing agent will not be counted in the number of option contracts executed on the Exchange by any Member. (Incidental Priority Customer-to-Priority Customer transactions, that are not crossing transactions, will be counted in the number of options contracts executed on the Exchange by a Member.) Special strategies for the purpose of calculating trading volume include: (i) dividend strategy; (ii) merger strategy; (iii) short stock interest strategy; (iv) reversal and conversion strategies; (v) jelly roll strategy; and (vi) similar strategies offered by an options exchange that are subject to a fee cap. Trading in special strategies currently is not available on MIAX PEARL. Special strategies will be omitted from the calculation of % OCC ADV to the extent it is possible to identify such transactions.

<sup>7</sup> The first measurement period will begin on May 1, 2018 and end June 30, 2018. Therefore, May 1, 2018 through June 30, 2018 will count as months 1-2 for purposes of the measurement period.

resulting from months 15-20, with a volume commitment of 0.400% of OCC ADV on MIAX PEARL per I-Unit; (v) 16.88% of the warrants resulting from months 21-26, with a volume commitment of 0.400% of OCC ADV on MIAX PEARL per I-Unit; and (vi) 16.88% of the warrants resulting from months 27-32, with a volume commitment of 0.400% of OCC ADV on MIAX PEARL per I-Unit. If a participant Member reaches 100% of the volume commitment during a tranche's measurement period, the Member will earn 100% of the warrants applicable to such measurement period. If a participant Member reaches less than 100% but at least 70% of the volume commitment during a tranche's measurement period, the Member will earn a reduced amount of warrants on a pro-rata basis applicable to such measurement period. If a participant Member fails to reach a minimum of 70% of the volume commitment during a tranche's measurement period, the Member will lose all right to that tranche of warrants. Notwithstanding, in the event a participant Member has not satisfied the volume commitment for any one measurement period (other than measurement period 6), the participant Member will have an opportunity to vest those warrants if such participant Member applies a portion of the Member's over-performance from the measurement period immediately following the prior measurement period to ensure a minimum of 70% of the volume commitment in the prior period and in addition has satisfied the volume commitment for the measurement period immediately following. If a participant Member exceeds 100% of the volume commitment during a tranche's measurement period, the Member is able to earn, on a pro-rata basis, warrants not earned by other participant Members.

#### J-Units Option

Members that participate in the J-Unit option of the Program will be issued for each unit warrants to purchase 416,344 shares of common stock of MIH in exchange for the prepayment of

ERP Exchange Fees in the amount of \$250,000 for the 32-month period commencing May 1, 2018, and with such warrants being exercisable upon the achievement by the participating Member of certain volume thresholds on the Exchange during a 32-month measurement period commencing May 1, 2018. A total of 25 J-Units will be offered. The total equity ownership of MIH common stock held by any one participant Member will be subject to a cap of 19.9%.

The warrants will vest in six (6) tranches during the following measurement periods: (i) 6.25% of the warrants resulting from months 1-2, with a volume commitment of 0.400% of OCC ADV on MIAX PEARL per J-Unit;<sup>8</sup> (ii) 18.75% of the warrants resulting from months 3-8, with a volume commitment of 0.400% of OCC ADV on MIAX PEARL per J-Unit; (iii) 18.75% of the warrants resulting from months 9-14, with a volume commitment of 0.400% of OCC ADV on MIAX PEARL per J-Unit; (iv) 18.75% of the warrants resulting from months 15-20, with a volume commitment of 0.400% of OCC ADV on MIAX PEARL per J-Unit; (v) 18.75% of the warrants resulting from months 21-26, with a volume commitment of 0.400% of OCC ADV on MIAX PEARL per J-Unit; and (vi) 18.75% of the warrants resulting from months 27-32, with a volume commitment of 0.400% of OCC ADV on MIAX PEARL per J-Unit. If a participant Member reaches 100% of the volume commitment during any one tranche's measurement period, the Member will earn 100% of the warrants applicable to such measurement period. If a participant Member reaches less than 100% but at least 70% of the volume commitment during a tranche's measurement period, the Member will earn a reduced amount of warrants on a pro-rata basis applicable to such measurement period. If a participant Member fails to reach a minimum of 70% of the volume commitment during the measurement period, the Member will lose all

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<sup>8</sup> The first measurement period will begin on May 1, 2018 and end June 30, 2018. Therefore, May 1, 2018 through June 30, 2018 will count as months 1-2 for purposes of the measurement period.



right to that tranche of warrants. Notwithstanding, in the event a participant Member has not satisfied the volume commitment for any one measurement period (other than measurement period 6), the participant Member will have an opportunity to vest those warrants if such participant Member applies a portion of the Member's over-performance from the measurement period immediately following the prior measurement period to ensure a minimum of 70% of the volume commitment in the prior period, and in addition has satisfied the volume commitment for the measurement periods immediately following. If a participant Member exceeds 100% of the volume commitment during any one tranche's measurement period, the Member is able to earn, on a pro-rata basis, warrants not earned by other participant Members.

A participant Member will prepay the ERP Exchange Fees. Once a participant Member has prepaid ERP Exchange Fees for the 32-month period, each month the participant Member may execute contracts and accumulate such ERP Exchange Fees based on the prevailing MIAX PEARL Fee Schedule in effect at the time. Once a J-Unit participant Member has incurred ERP Exchange Fees whereby the total accumulated ERP Exchange Fees equal the prepaid amount of such ERP Exchange Fees, all subsequently incurred ERP Exchange Fees will be billed and collected at the appropriate rates as defined in the MIAX PEARL Fee Schedule.

#### Provisions Applicable to Both I-Units and J-Units

A Member of the Exchange and its Affiliate as defined in the Fee Schedule of MIAX PEARL<sup>9</sup> may together participate in the Program as follows. In order to participate in the

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<sup>9</sup> For purposes of the MIAX PEARL Fee Schedule, the term "Affiliate" means (i) an affiliate of a Member of at least 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A, ("Affiliate"), or (ii) the Appointed Market Maker of an Appointed EEM (or, conversely, the Appointed EEM of an Appointed Market Maker). An "Appointed Market Maker" is a MIAX PEARL Market Maker (who does not otherwise have a corporate affiliation based upon common ownership with an EEM) that has been appointed by an EEM and an "Appointed EEM" is an EEM (who does not

Program with a participant Member an Appointed Market Maker or Appointed EEM must be designated as such as of April 27, 2018 pursuant to the procedure for appointing an Appointed Market Maker or Appointed EEM set forth in the MIAX PEARL Fee Schedule. An Appointed Market Maker or Appointed EEM may not otherwise be a participant Member of the Program. Notwithstanding the ability to change the designation of an Appointed Market Maker or Appointed EEM as set forth in the Fee Schedule of MIAX PEARL for MIAX PEARL Fee Schedule purposes, no such change in designation may be made for purposes of the Program and any designation of an Appointed Market Maker or Appointed EEM as of April 27, 2018 shall remain in effect for purposes of the Program for the duration of the Program.<sup>10</sup> An Affiliate of a Member with at least 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A (a "Corporate Affiliate"), is not required to follow the procedure set forth on the MIAX PEARL Fee Schedule for designation of an Appointed Market Maker or Appointed

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

<sup>10</sup> A participant Member who changes a designation of an Appointed Market Maker or Appointed EEM during the Program will be effective with respect to transactions on the Exchange other than the Program.

EEM and will together be deemed a participant Member in the Program for so long as it maintains such corporate affiliation with the other Member. Alternatively, a Corporate Affiliate of a Member may directly join the Program and be a separate participant Member of the Program. Volume thresholds and other aspects of the Program may be met by the Member and its Affiliate who will together constitute a participant Member in the Program. In the case where a Member and its Corporate Affiliate separately joined the Program as participant Members volume thresholds and other aspects of the Program must be met separately by the Member and its Corporate Affiliate.

Each participant Member will have a standard piggyback registration right to include the common shares and the common shares issuable upon exercise of the warrants should MIH file a Registration Statement under the Securities Act of 1933. Each participant Member will also have the right to participate pro rata in all future offerings of MIH securities for so long as the participant Member holds at least 51% of the common shares purchased by the participating Member directly or issuable upon the exercise of warrants included in at least one J-Unit. MIH will have the right of first refusal to purchase any common shares or warrant shares that a participant Member decides to transfer or sell. Other participant Members will have the secondary right of first refusal to purchase any common shares or warrant shares that a participant Member decides to transfer or sell.

All applicants will be subject to the same eligibility and designation criteria, and all participant Members will participate in the Program on the same terms, conditions and restrictions. To be designated as a participant Member, an applicant must: (i) be a Member in good standing of MIAX PEARL; (ii) qualify as an “accredited investor” as such term is defined

in Regulation D of the Securities Act of 1933;<sup>11</sup> and (iii) have executed all required documentation for Program participation. Participant Members must have executed the definitive documentation, satisfied the eligibility criteria required of Program participants enumerated above, and tendered the minimum cash investment or prepayment of fees by April 27, 2018, with a closing to occur on April 30, 2018.

As discussed above, the purpose of the Program is to encourage Members to direct greater trade volume to MIAX PEARL to enhance trading volume in MIAX PEARL's market. Increased volume will provide for greater liquidity and enhanced price discovery, which benefits all market participants. Other exchanges have engaged in the practice of incentivizing increased order flow in order to attract liquidity providers through equity sharing arrangements.<sup>12</sup> In addition, Miami International Securities Exchange, LLC ("MIAX Options"), an affiliate of the Exchange, previously adopted substantially similar programs to incentivize increased order flow in order to attract liquidity providers through an equity sharing arrangement.<sup>13</sup> The Program

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<sup>11</sup> The purpose of this criterion relates to the ability of MIH to sell shares of common stock pursuant to an exemption from registration under the Securities Act of 1933. The definition of "accredited investor" under Rule 501(a)(1) of the Securities Act of 1933 includes any broker or dealer registered pursuant to Section 15 of the Act. MIAX PEARL Rule 200(b) requires a Member to be registered as a broker or dealer pursuant to Section 15 of the Act, therefore all MIAX PEARL Members will satisfy this criterion.

<sup>12</sup> See, e.g., Securities Exchange Act Release Nos. 62358 (June 22, 2010), 75 FR 37861 (June 30, 2010) (SR-NSX-2010-06); 64742 (June 24, 2011), 76 FR 38436 (June 30, 2011) (SR-NYSEAmex-2011-018); 69200 (March 21, 2013), 78 FR 18657 (March 27, 2013) (SR-CBOE-2013-31); 74114 (January 22, 2015), 80 FR 4611 (January 28, 2015) (SR-BOX-2015-03); and 74576 (March 25, 2015), 80 FR 17122 (March 31, 2015) (SR-BOX-2015-16).

<sup>13</sup> See Securities Exchange Act Release Nos. 70498 (September 25, 2013), 78 FR 60348 (October 1, 2013) (SR-MIAX-2013-43); 74095 (January 20, 2015), 80 FR 4011 (January 26, 2015) (SR-MIAX-2015-02); 74225 (February 12, 2015), 80 FR 7897 (February 12, 2015) (SR-MIAX-2015-05); and 80909 (June 12, 2017), 82 FR 27743 (June 16, 2017) (SR-MIAX-2017-28).

similarly intends to attract order flow, which will increase liquidity, thereby providing greater trading opportunities and tighter spreads for other market participants and causing a corresponding increase in order flow from these other market participants. The Program will similarly reward the liquidity providers that provide this additional volume with a potential proprietary interest in MIAX PEARL.

The specific volume thresholds of the Program's measurement periods were set based upon business determinations and analysis of current volume levels. The volume thresholds are intended to incentivize firms to increase the number of orders that are sent to MIAX PEARL to achieve the next threshold. Increasing the number of orders that are sent to MIAX PEARL will in turn provide tighter and more liquid markets, and therefore attract more business as well.

The Exchange's proposal to include certain non-transaction fees within the definition of ERP Exchange Fees and thus render them eligible for prepayment under the Program is designed to offer broader Member participation in the Program. Since the Exchange operates with a maker-taker pricing structure, Members that are only "makers" on the Exchange could receive significant transaction rebates on a monthly basis, which could obviate the need to pre-pay transaction fees under the Program. However, by including certain regular, monthly recurring non-transaction fees as eligible for prepayment under the Program, the Exchange believes that it is creating an incentive for Members that conduct this type of business on the Exchange to participate in the Program, thereby broadening the number of Members that could potentially participate in the Program.

Finally, the Exchange notes that it is not proposing to offer participant Members the right to appoint a director or an observer to the MIH Board and/or the MIAX PEARL Board when a participating Member acquires a certain number of units, which is different than the programs

that MIAX Options has offered its Members in the past.<sup>14</sup> The Exchange believes that, for business reasons, such a right is not a relevant component for this Program, and thus has determined not to include such a right.

MIAX PEARL will initiate the measurement period on May 1, 2018. The Exchange will notify Members of the implementation of the Program and the dates of the enrollment period by Regulatory Circular, and will post a copy of this rule filing on its website. Any MIAX PEARL Member that is interested in participating in the Program may contact MIAX PEARL for more information and legal documentation and will be required to enter into a nondisclosure agreement regarding this additional Program information.

b. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act<sup>15</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>16</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) of the Act<sup>17</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also

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<sup>14</sup> Id.

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

<sup>16</sup> 15 U.S.C. 78f(b)(5).

<sup>17</sup> 15 U.S.C. 78f(b)(5).

believes the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>18</sup> which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

In particular, the proposed rule change is equitable and not unfairly discriminatory, because all Members may elect to participate (or elect to not participate) in the Program and earn units on the same terms and conditions, assuming they satisfy the same eligibility criteria as described above. The eligibility criteria are objective; thus, all Members have the ability to satisfy them. The Board also has authorized MIAX PEARL to offer common shares in MIH to any Member that requests designation to participate in the Program and otherwise satisfies the eligibility criteria to ensure that all Members will have the opportunity to own common shares and thus participate in the Program if they so choose. In addition, participant Members will earn warrants on a pro-rata basis upon meeting fixed volume threshold amounts during the measurement periods that will apply to all participant Members.

The Exchange believes that the methodology used to calculate the volume thresholds is fair, reasonable and not unfairly discriminatory because it is based on objective criteria that are designed to omit from the calculation functionality that is not available on the Exchange and types of transactions that are subject to little or no transaction fees. Specifically, the Exchange believes excluding Priority Customer-to-Priority Customer Crossing transactions where no fees are paid to the Exchange, special strategies, and contracts as to which a Member acts solely as clearing agent from the number of option contracts executed on the Exchange by any Member is reasonable and not unfairly discriminatory because participating Members could otherwise game the volume thresholds by executing excess volumes in these types of transactions in which either

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<sup>18</sup> 15 U.S.C. 78f(b)(4).

no transaction fees are charged on the Exchange, or the transaction is subject to a fee cap. The Program is designed to reward participating Members for bringing their orders and quotes to the Exchange to be executed on the Exchange. The Exchange believes it is appropriate to exclude special strategies from the OCC volume calculation since those transactions are not executed on the Exchange. The Exchange believes that omitting clearing only transactions from the calculation to be fair and reasonable because the fact that a Member is clearing a trade is coincidental to the choice of where to execute that trade. And, because clearing only transactions are not executed on MIAX PEARL, they do not fall within the intended transactions that qualify for the Program. In addition, if the Exchange were to reward the party clearing a trade, the Exchange would possibly be double counting that trade - once for the executing party and once for the clearing party. Furthermore, the Exchange believes that counting incidental Priority Customer-to-Priority Customer transactions, which are not crossing transactions, in the number of options contracts executed on the Exchange by a Member is fair and reasonable because in these situations the Priority Customer is not necessarily choosing to execute against another Priority Customer in order to avoid a transaction fee.

The Exchange believes that its proposal to allow Affiliates to participate in the Program is fair, reasonable and not unfairly discriminatory because it is being offered to all Members of the Exchange on the same terms and conditions. The Exchange believes that allowing both traditional Corporate Affiliates and also Appointed Market Makers and Appointed EEMs to participate in the Program is reasonable and appropriate because it will provide those participants with a potentially greater opportunity to achieve the volume thresholds in the Program. Also, the Exchange believes that allowing Appointed Market Makers and Appointed EEMs to participate in the Program expands access to the Program to Members that might not otherwise, individually



on their own, participate in the Program, which will benefit all market participants by providing greater liquidity on the Exchange, all of which perfects the mechanism for a free and open market and national market system.

The Exchange believes the Program is equitable and reasonable because an increase in volume and liquidity would benefit all market participants by providing more trading opportunities and tighter spreads, even to those market participants that do not participate in the Program. Additionally, the Exchange believes the proposed rule change is consistent with the Act because, as described above, the Program is designed to bring greater volume and liquidity to the Exchange, which will benefit all market participants by providing tighter quoting and better prices, all of which perfects the mechanism for a free and open market and national market system.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change will improve competition by providing market participants with another option when determining where to execute orders and post liquidity.

The Exchange believes that the proposed change would increase both intermarket and intramarket competition by incenting participant Members to direct their orders to the Exchange, which will enhance the quality of quoting and increase the volume of contracts traded here. To the extent that there is an additional competitive burden on non-participant Members, the Exchange believes that this is appropriate because the Program should incent Members to direct additional order flow to the Exchange and thus provide additional liquidity that enhances the quality of its markets and increases the volume of contracts traded here. To the extent that this purpose is achieved, all of the Exchange's market participants should benefit from the improved

market liquidity. Enhanced market quality and increased transaction volume that results from the anticipated increase in order flow directed to the Exchange will benefit all market participants and improve competition on the Exchange.

Given the robust competition for volume among options markets, many of which offer the same products, implementing a program to attract order flow like the one being proposed in this filing is consistent with the above-mentioned goals of the Act. This is especially true for the smaller options markets, such as MIAX PEARL, which is competing for volume with much larger exchanges that dominate the options trading industry. MIAX PEARL has a modest percentage of the average daily trading volume in options, so it is unlikely that the Program could cause any competitive harm to the options market or to market participants. Rather, the Program is an attempt by a small options market to attract order volume away from larger competitors by adopting an innovative pricing strategy, as evidenced by the volume thresholds of the Program that represent fractions of 1% of OCC ADV. The Exchange notes that if the Program resulted in a modest percentage increase in the average daily trading volume in options executing on MIAX PEARL, while such percentage would represent a large volume increase for MIAX PEARL, it would represent a minimal reduction in volume of its larger competitors in the industry. The Exchange believes that the Program will help further competition, because market participants will have yet another option in determining where to execute orders and post liquidity if they factor the benefits of MIAX PEARL equity participation into the determination. The Exchange notes that other exchanges have engaged in the practice of incentivizing increased order flow in order to attract liquidity providers through equity sharing arrangements.<sup>19</sup> In addition, MIAX Options previously adopted substantially similar programs to incentivize

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<sup>19</sup> See supra note 12.

increased order flow in order to attract liquidity providers through an equity sharing arrangement.<sup>20</sup>

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

No written comments were either solicited or received.

**6. Extension of Time Period for Commission Action**

Not applicable.

**7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)**

Pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>21</sup> and Rule 19b-4(f)(2) thereunder<sup>22</sup> the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

At any time within 60 days of the filing of this proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission**

The proposed rule change is based on substantially similar rule filings by MIAX Options.<sup>23</sup> The terms of the Program are substantially similar to the prior filing submitted by

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<sup>20</sup> See supra note 13.

<sup>21</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>22</sup> 17 CFR 240.19b-4.

<sup>23</sup> See supra note 13.

MIAX Options except for: (i) the size of the I and J Units are 2 and 25 Units respectively rather than 5 G Units and 30 H Units; (ii) the amount of the prepayment of ERP Exchange Fees is \$250,000 rather than \$500,000; (iii) the specific volume thresholds and measurement period durations were modified based upon business determinations and analysis of current volume levels; (iv) certain non-transaction fees are included together with transaction fees in the fee prepayment for J-Units due at closing;<sup>24</sup> and (v) Members do not have a right to appoint directors or observers to the Exchange's Board. The Exchange's proposal to include certain non-transaction fees within the definition of ERP Exchange Fees and thus render them eligible for prepayment under the Program also differs from the MIAX Options programs, and is due to the different pricing structure in place on the Exchange versus that in place on MIAX Options. This aspect of the proposal is designed to offer broader Member participation in the Program. Since the Exchange operates with a maker-taker pricing structure, Members that are only "makers" on the Exchange could receive significant transaction rebates on a monthly basis, which could obviate the need to pre-pay transaction fees under the Program. However, by including certain regular, monthly recurring non-transaction fees as eligible for prepayment under the Program, the Exchange believes that it is creating an incentive for Members that conduct this type of business on the Exchange to participate in the Program, thereby broadening the number of Members that could potentially participate in the Program. The Exchange notes that it is not proposing to offer participant Members the right to appoint a director or an observer to the MIH Board and/or the MIAX PEARL Board when a participating Member acquires a certain number of units, which is different than the programs that MIAX Options has offered its Members in the

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<sup>24</sup> See Securities Exchange Act Release No. 80909 (June 12, 2017), 82 FR 27743 (June 16, 2017) (SR-MIAX-2017-28).

past.<sup>25</sup> The Exchange believes that, for business reasons, such a right is not a relevant component for this Program, and thus has determined not to include such a right. The Exchange notes that other exchanges have offered equity participation programs to their members in the past.<sup>26</sup>

**9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act**

Not applicable.

**10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act**

Not applicable.

**11. Exhibits**

1. Notice of proposed rule for publication in the Federal Register.

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<sup>25</sup> See supra note 13.

<sup>26</sup> See supra note 12.

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. SR-PEARL-2018-08

April \_\_, 2018

Self-Regulatory Organizations: Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by MIAX PEARL, LLC to Implement an Equity Rights Program

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 6, 2018, MIAX PEARL, LLC (“MIAX PEARL” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange is filing a proposal to implement an equity rights program.

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

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified

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

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

in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange proposes to implement an equity rights program (“Program”) pursuant to which units representing the right to acquire equity in the Exchange’s parent holding company, Miami International Holdings, Inc. (“MIH”) would be issued to a participating Member in exchange for payment of an initial purchase price or the prepayment of certain ERP Exchange Fees<sup>3</sup> and the achievement of certain liquidity volume thresholds on the Exchange over a 32-month period. The purpose of the Program is to promote the long-term interests of MIAX PEARL by providing incentives designed to encourage future MIH owners and MIAX PEARL market participants to contribute to the growth and success of MIAX PEARL, by being active liquidity providers and takers to provide enhanced levels of trading volume to MIAX PEARL’s market, through an opportunity to increase their proprietary interests in MIAX PEARL’s enterprise value.

Members that participate in the Program will have two options to choose from: (i) an offering of I-Units; and/or (ii) an offering of J-Units.<sup>4</sup>

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<sup>3</sup> The ERP Exchange fees consist of: (a) transaction fees as set forth in Section 1)a of the MIAX PEARL Exchange Fee Schedule; (b) membership fees as set forth in Section 3 of the MIAX PEARL Exchange Fee Schedule; (c) system connectivity fees as set forth in Section 5 of the MIAX PEARL Exchange Fee Schedule; and (d) market data fees as set forth in Section 6 of the MIAX PEARL Exchange Fee Schedule (collectively, the “ERP Exchange Fees”).

<sup>4</sup> The Program which provides equity-like consideration in exchange for market making or the provision of liquidity, order flow or volume is open to market participants generally. All MIAX PEARL Members may participate subject to their satisfaction of eligibility requirements. To be designated as a participant Member, an applicant must: (i) be a Member in good standing of MIAX PEARL; (ii) qualify as an “accredited investor” as

I-Units Option

Members that participate in the I-Unit option of the Program will be issued for each unit (i) 31,870 shares of MIH common stock and (ii) warrants to purchase 384,474 shares of common stock of MIH in exchange for such participant Member's initial cash capital contribution of \$215,122.50, and with such warrants being exercisable upon the achievement by the participating Member of certain volume thresholds on the Exchange during a 32-month measurement period commencing May 1, 2018. A total of 2 I-Units will be offered. The total equity ownership of MIH common stock held by any one participant Member will be subject to a cap of 19.9%.<sup>5</sup>

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such term is defined in Regulation D of the Securities Act of 1933; and (iii) have executed all required documentation for Program participation. Members may elect to participate in either or both of the options. If either the I-Unit or the J-Unit option is oversubscribed, the units in the oversubscribed option will be allocated on a pro-rata basis that may result in a fractional allocation.

<sup>5</sup> See Ninth Article (b)(i)(B), Amended and Restated Certificate of Incorporation of Miami International Holdings, Inc., effective October 16, 2015 (providing that no Exchange Member, either alone or together with its Related Persons, may own, directly or indirectly, of record or beneficially, shares constituting more than twenty percent (20%) of any class of capital stock of the Corporation). See also Ninth Article (b)(i)(C), Amended and Restated Certificate of Incorporation of Miami International Holdings, Inc., effective October 16, 2015 (providing that no Person, either alone or together with its Related Persons, at any time may, directly, indirectly or pursuant to any voting trust, agreement, plan or other arrangement, vote or cause the voting of shares of the capital stock of the Corporation or give any consent or proxy with respect to shares representing more than twenty percent (20%) of the voting power of the then issued and outstanding capital stock of the Corporation, nor may any Person, either alone or together with its Related Persons, enter into any agreement, plan or other arrangement with any other Person, either alone or together with its Related Persons, under circumstances that would result in the shares of capital stock of the Corporation that are subject to such agreement, plan or other arrangement not being voted on any matter or matters or any proxy relating thereto being withheld, where the effect of such agreement, plan or other arrangement would be to enable any Person, either alone or together with its Related Persons, to vote, possess the right to vote or cause the voting of shares of the capital stock of the Corporation which would represent more than twenty percent (20%) of said voting power.). Any purported transfer of shares or ownership of shares in violation of the ownership cap by a stockholder would be subject to the limitations of the Certificate of Incorporation, including the non-recognition of voting rights of shares in excess of the



The warrants will vest in seven (7) tranches: (i) one (1) tranche, upon initial investment; and (ii) six (6) tranches during a measurement period of months 1-32 of the Program. In addition, the participant Members may earn or lose the right to exercise warrants on a pro-rata basis based upon meeting volume commitments during the measurement periods, as detailed below.

Upon the initial investment, the participant Member would receive common shares equal to 31,870 shares of the common stock and 10% of the warrants will vest. A participant Member will be eligible to earn the remaining warrants during measurement periods provided that the participant has achieved a specified percentage of the total national average daily volume of options contracts reported to The Options Clearing Corporation (“OCC”) (“OCC ADV”) on MIAX PEARL of all option classes listed on MIAX PEARL.<sup>6</sup>

The remaining six (6) tranches, of 90% of the warrants, will vest during the following measurement periods: (i) 5.63% of the warrants resulting from months 1-2, with a volume

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cap and a redemption right by MIH for excess shares. See also Ninth Article (d) and (e), Amended and Restated Certificate of Incorporation of Miami International Holdings, Inc., effective October 16, 2015.

<sup>6</sup> If an options class is not listed on MIAX PEARL, then the trading volume in that options class will be omitted from the calculation of % OCC ADV. Priority Customer-to-Priority Customer Crossing transactions where no fees are paid to the Exchange, special strategies, and contracts as to which a Member acts solely as clearing agent will not be counted in the number of option contracts executed on the Exchange by any Member. (Incidental Priority Customer-to-Priority Customer transactions, that are not crossing transactions, will be counted in the number of options contracts executed on the Exchange by a Member.) Special strategies for the purpose of calculating trading volume include: (i) dividend strategy; (ii) merger strategy; (iii) short stock interest strategy; (iv) reversal and conversion strategies; (v) jelly roll strategy; and (vi) similar strategies offered by an options exchange that are subject to a fee cap. Trading in special strategies currently is not available on MIAX PEARL. Special strategies will be omitted from the calculation of % OCC ADV to the extent it is possible to identify such transactions.

commitment of 0.400% of OCC ADV on MIA X PEARL per I-Unit;<sup>7</sup> (ii) 16.87% of the warrants resulting from months 3-8, with a volume commitment of 0.400% of OCC ADV on MIA X PEARL per I-Unit; (iii) 16.87% of the warrants resulting from months 9-14, with a volume commitment of 0.400% of OCC ADV on MIA X PEARL per I-Unit; (iv) 16.87% of the warrants resulting from months 15-20, with a volume commitment of 0.400% of OCC ADV on MIA X PEARL per I-Unit; (v) 16.88% of the warrants resulting from months 21-26, with a volume commitment of 0.400% of OCC ADV on MIA X PEARL per I-Unit; and (vi) 16.88% of the warrants resulting from months 27-32, with a volume commitment of 0.400% of OCC ADV on MIA X PEARL per I-Unit. If a participant Member reaches 100% of the volume commitment during a tranche's measurement period, the Member will earn 100% of the warrants applicable to such measurement period. If a participant Member reaches less than 100% but at least 70% of the volume commitment during a tranche's measurement period, the Member will earn a reduced amount of warrants on a pro-rata basis applicable to such measurement period. If a participant Member fails to reach a minimum of 70% of the volume commitment during a tranche's measurement period, the Member will lose all right to that tranche of warrants. Notwithstanding, in the event a participant Member has not satisfied the volume commitment for any one measurement period (other than measurement period 6), the participant Member will have an opportunity to vest those warrants if such participant Member applies a portion of the Member's over-performance from the measurement period immediately following the prior measurement period to ensure a minimum of 70% of the volume commitment in the prior period and in addition has satisfied the volume commitment for the measurement period immediately following. If a participant Member exceeds 100% of the volume commitment during a tranche's

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<sup>7</sup> The first measurement period will begin on May 1, 2018 and end June 30, 2018. Therefore, May 1, 2018 through June 30, 2018 will count as months 1-2 for purposes of the measurement period.

measurement period, the Member is able to earn, on a pro-rata basis, warrants not earned by other participant Members.

#### J-Units Option

Members that participate in the J-Unit option of the Program will be issued for each unit warrants to purchase 416,344 shares of common stock of MIH in exchange for the prepayment of ERP Exchange Fees in the amount of \$250,000 for the 32-month period commencing May 1, 2018, and with such warrants being exercisable upon the achievement by the participating Member of certain volume thresholds on the Exchange during a 32-month measurement period commencing May 1, 2018. A total of 25 J-Units will be offered. The total equity ownership of MIH common stock held by any one participant Member will be subject to a cap of 19.9%.

The warrants will vest in six (6) tranches during the following measurement periods: (i) 6.25% of the warrants resulting from months 1-2, with a volume commitment of 0.400% of OCC ADV on MIAX PEARL per J-Unit;<sup>8</sup> (ii) 18.75% of the warrants resulting from months 3-8, with a volume commitment of 0.400% of OCC ADV on MIAX PEARL per J-Unit; (iii) 18.75% of the warrants resulting from months 9-14, with a volume commitment of 0.400% of OCC ADV on MIAX PEARL per J-Unit; (iv) 18.75% of the warrants resulting from months 15-20, with a volume commitment of 0.400% of OCC ADV on MIAX PEARL per J-Unit; (v) 18.75% of the warrants resulting from months 21-26, with a volume commitment of 0.400% of OCC ADV on MIAX PEARL per J-Unit; and (vi) 18.75% of the warrants resulting from months 27-32, with a volume commitment of 0.400% of OCC ADV on MIAX PEARL per J-Unit. If a participant Member reaches 100% of the volume commitment during any one tranche's measurement period, the Member will earn 100% of the warrants applicable to such measurement period. If a

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<sup>8</sup> The first measurement period will begin on May 1, 2018 and end June 30, 2018. Therefore, May 1, 2018 through June 30, 2018 will count as months 1-2 for purposes of the measurement period.

participant Member reaches less than 100% but at least 70% of the volume commitment during a tranche's measurement period, the Member will earn a reduced amount of warrants on a pro-rata basis applicable to such measurement period. If a participant Member fails to reach a minimum of 70% of the volume commitment during the measurement period, the Member will lose all right to that tranche of warrants. Notwithstanding, in the event a participant Member has not satisfied the volume commitment for any one measurement period (other than measurement period 6), the participant Member will have an opportunity to vest those warrants if such participant Member applies a portion of the Member's over-performance from the measurement period immediately following the prior measurement period to ensure a minimum of 70% of the volume commitment in the prior period, and in addition has satisfied the volume commitment for the measurement periods immediately following. If a participant Member exceeds 100% of the volume commitment during any one tranche's measurement period, the Member is able to earn, on a pro-rata basis, warrants not earned by other participant Members.

A participant Member will prepay the ERP Exchange Fees. Once a participant Member has prepaid ERP Exchange Fees for the 32-month period, each month the participant Member may execute contracts and accumulate such ERP Exchange Fees based on the prevailing MIAX PEARL Fee Schedule in effect at the time. Once a J-Unit participant Member has incurred ERP Exchange Fees whereby the total accumulated ERP Exchange Fees equal the prepaid amount of such ERP Exchange Fees, all subsequently incurred ERP Exchange Fees will be billed and collected at the appropriate rates as defined in the MIAX PEARL Fee Schedule.

Provisions Applicable to Both I-Units and J-Units

A Member of the Exchange and its Affiliate as defined in the Fee Schedule of MIAX PEARL<sup>9</sup> may together participate in the Program as follows. In order to participate in the Program with a participant Member an Appointed Market Maker or Appointed EEM must be designated as such as of April 27, 2018 pursuant to the procedure for appointing an Appointed Market Maker or Appointed EEM set forth in the MIAX PEARL Fee Schedule. An Appointed Market Maker or Appointed EEM may not otherwise be a participant Member of the Program. Notwithstanding the ability to change the designation of an Appointed Market Maker or Appointed EEM as set forth in the Fee Schedule of MIAX PEARL for MIAX PEARL Fee Schedule purposes, no such change in designation may be made for purposes of the Program and any designation of an Appointed Market Maker or Appointed EEM as of April 27, 2018 shall remain in effect for

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<sup>9</sup> For purposes of the MIAX PEARL Fee Schedule, the term “Affiliate” means (i) an affiliate of a Member of at least 75% common ownership between the firms as reflected on each firm’s Form BD, Schedule A, (“Affiliate”), or (ii) the Appointed Market Maker of an Appointed EEM (or, conversely, the Appointed EEM of an Appointed Market Maker). An “Appointed Market Maker” is a MIAX PEARL Market Maker (who does not otherwise have a corporate affiliation based upon common ownership with an EEM) that has been appointed by an EEM and an “Appointed EEM” is an EEM (who does not otherwise have a corporate affiliation based upon common ownership with a MIAX PEARL Market Maker) that has been appointed by a MIAX PEARL Market Maker, pursuant to the following process. A MIAX PEARL Market Maker appoints an EEM and an EEM appoints a MIAX PEARL Market Maker, for the purposes of the Fee Schedule, by each completing and sending an executed Volume Aggregation Request Form by email to membership@miaxoptions.com no later than 2 business days prior to the first business day of the month in which the designation is to become effective. Transmittal of a validly completed and executed form to the Exchange along with the Exchange’s acknowledgement of the effective designation to each of the Market Maker and EEM will be viewed as acceptance of the appointment. The Exchange will only recognize one designation per Member. A Member may make a designation not more than once every 12 months (from the date of its most recent designation), which designation shall remain in effect unless or until the Exchange receives written notice submitted 2 business days prior to the first business day of the month from either Member indicating that the appointment has been terminated. Designations will become operative on the first business day of the effective month and may not be terminated prior to the end of the month. Execution data and reports will be provided to both parties. See MIAX PEARL Fee Schedule Definitions.

purposes of the Program for the duration of the Program.<sup>10</sup> An Affiliate of a Member with at least 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A (a "Corporate Affiliate"), is not required to follow the procedure set forth on the MIAX PEARL Fee Schedule for designation of an Appointed Market Maker or Appointed EEM and will together be deemed a participant Member in the Program for so long as it maintains such corporate affiliation with the other Member. Alternatively, a Corporate Affiliate of a Member may directly join the Program and be a separate participant Member of the Program. Volume thresholds and other aspects of the Program may be met by the Member and its Affiliate who will together constitute a participant Member in the Program. In the case where a Member and its Corporate Affiliate separately joined the Program as participant Members volume thresholds and other aspects of the Program must be met separately by the Member and its Corporate Affiliate.

Each participant Member will have a standard piggyback registration right to include the common shares and the common shares issuable upon exercise of the warrants should MIH file a Registration Statement under the Securities Act of 1933. Each participant Member will also have the right to participate pro rata in all future offerings of MIH securities for so long as the participant Member holds at least 51% of the common shares purchased by the participating Member directly or issuable upon the exercise of warrants included in at least one J-Unit. MIH will have the right of first refusal to purchase any common shares or warrant shares that a participant Member decides to transfer or sell. Other participant Members will have the secondary right of first refusal to purchase any common shares or warrant shares that a participant Member decides to transfer or sell.

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<sup>10</sup> A participant Member who changes a designation of an Appointed Market Maker or Appointed EEM during the Program will be effective with respect to transactions on the Exchange other than the Program.

All applicants will be subject to the same eligibility and designation criteria, and all participant Members will participate in the Program on the same terms, conditions and restrictions. To be designated as a participant Member, an applicant must: (i) be a Member in good standing of MIAX PEARL; (ii) qualify as an “accredited investor” as such term is defined in Regulation D of the Securities Act of 1933;<sup>11</sup> and (iii) have executed all required documentation for Program participation. Participant Members must have executed the definitive documentation, satisfied the eligibility criteria required of Program participants enumerated above, and tendered the minimum cash investment or prepayment of fees by April 27, 2018, with a closing to occur on April 30, 2018.

As discussed above, the purpose of the Program is to encourage Members to direct greater trade volume to MIAX PEARL to enhance trading volume in MIAX PEARL’s market. Increased volume will provide for greater liquidity and enhanced price discovery, which benefits all market participants. Other exchanges have engaged in the practice of incentivizing increased order flow in order to attract liquidity providers through equity sharing arrangements.<sup>12</sup> In addition, Miami International Securities Exchange, LLC (“MIAX Options”), an affiliate of the Exchange, previously adopted substantially similar programs to incentivize increased order flow

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<sup>11</sup> The purpose of this criterion relates to the ability of MIH to sell shares of common stock pursuant to an exemption from registration under the Securities Act of 1933. The definition of “accredited investor” under Rule 501(a)(1) of the Securities Act of 1933 includes any broker or dealer registered pursuant to Section 15 of the Act. MIAX PEARL Rule 200(b) requires a Member to be registered as a broker or dealer pursuant to Section 15 of the Act, therefore all MIAX PEARL Members will satisfy this criterion.

<sup>12</sup> See, e.g., Securities Exchange Act Release Nos. 62358 (June 22, 2010), 75 FR 37861 (June 30, 2010) (SR-NSX-2010-06); 64742 (June 24, 2011), 76 FR 38436 (June 30, 2011) (SR-NYSEAmex-2011-018); 69200 (March 21, 2013), 78 FR 18657 (March 27, 2013) (SR-CBOE-2013-31); 74114 (January 22, 2015), 80 FR 4611 (January 28, 2015) (SR-BOX-2015-03); and 74576 (March 25, 2015), 80 FR 17122 (March 31, 2015) (SR-BOX-2015-16).

in order to attract liquidity providers through an equity sharing arrangement.<sup>13</sup> The Program similarly intends to attract order flow, which will increase liquidity, thereby providing greater trading opportunities and tighter spreads for other market participants and causing a corresponding increase in order flow from these other market participants. The Program will similarly reward the liquidity providers that provide this additional volume with a potential proprietary interest in MIAX PEARL.

The specific volume thresholds of the Program's measurement periods were set based upon business determinations and analysis of current volume levels. The volume thresholds are intended to incentivize firms to increase the number of orders that are sent to MIAX PEARL to achieve the next threshold. Increasing the number of orders that are sent to MIAX PEARL will in turn provide tighter and more liquid markets, and therefore attract more business as well.

The Exchange's proposal to include certain non-transaction fees within the definition of ERP Exchange Fees and thus render them eligible for prepayment under the Program is designed to offer broader Member participation in the Program. Since the Exchange operates with a maker-taker pricing structure, Members that are only "makers" on the Exchange could receive significant transaction rebates on a monthly basis, which could obviate the need to pre-pay transaction fees under the Program. However, by including certain regular, monthly recurring non-transaction fees as eligible for prepayment under the Program, the Exchange believes that it is creating an incentive for Members that conduct this type of business on the Exchange to participate in the Program, thereby broadening the number of Members that could potentially participate in the Program.

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<sup>13</sup> See Securities Exchange Act Release Nos. 70498 (September 25, 2013), 78 FR 60348 (October 1, 2013) (SR-MIAX-2013-43); 74095 (January 20, 2015), 80 FR 4011 (January 26, 2015) (SR-MIAX-2015-02); 74225 (February 12, 2015), 80 FR 7897 (February 12, 2015) (SR-MIAX-2015-05); and 80909 (June 12, 2017), 82 FR 27743 (June 16, 2017) (SR-MIAX-2017-28).



Finally, the Exchange notes that it is not proposing to offer participant Members the right to appoint a director or an observer to the MIH Board and/or the MIAX PEARL Board when a participating Member acquires a certain number of units, which is different than the programs that MIAX Options has offered its Members in the past.<sup>14</sup> The Exchange believes that, for business reasons, such a right is not a relevant component for this Program, and thus has determined not to include such a right.

MIAX PEARL will initiate the measurement period on May 1, 2018. The Exchange will notify Members of the implementation of the Program and the dates of the enrollment period by Regulatory Circular, and will post a copy of this rule filing on its website. Any MIAX PEARL Member that is interested in participating in the Program may contact MIAX PEARL for more information and legal documentation and will be required to enter into a nondisclosure agreement regarding this additional Program information.

## 2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act<sup>15</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>16</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with

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<sup>14</sup> Id.

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

<sup>16</sup> 15 U.S.C. 78f(b)(5).

the Section 6(b)(5) of the Act<sup>17</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>18</sup> which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

In particular, the proposed rule change is equitable and not unfairly discriminatory, because all Members may elect to participate (or elect to not participate) in the Program and earn units on the same terms and conditions, assuming they satisfy the same eligibility criteria as described above. The eligibility criteria are objective; thus, all Members have the ability to satisfy them. The Board also has authorized MIAX PEARL to offer common shares in MIH to any Member that requests designation to participate in the Program and otherwise satisfies the eligibility criteria to ensure that all Members will have the opportunity to own common shares and thus participate in the Program if they so choose. In addition, participant Members will earn warrants on a pro-rata basis upon meeting fixed volume threshold amounts during the measurement periods that will apply to all participant Members.

The Exchange believes that the methodology used to calculate the volume thresholds is fair, reasonable and not unfairly discriminatory because it is based on objective criteria that are designed to omit from the calculation functionality that is not available on the Exchange and types of transactions that are subject to little or no transaction fees. Specifically, the Exchange believes excluding Priority Customer-to-Priority Customer Crossing transactions where no fees are paid to the Exchange, special strategies, and contracts as to which a Member acts solely as clearing agent from the number of option contracts executed on the Exchange by any Member is

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<sup>17</sup> 15 U.S.C. 78f(b)(5).

<sup>18</sup> 15 U.S.C. 78f(b)(4).

reasonable and not unfairly discriminatory because participating Members could otherwise game the volume thresholds by executing excess volumes in these types of transactions in which either no transaction fees are charged on the Exchange, or the transaction is subject to a fee cap. The Program is designed to reward participating Members for bringing their orders and quotes to the Exchange to be executed on the Exchange. The Exchange believes it is appropriate to exclude special strategies from the OCC volume calculation since those transactions are not executed on the Exchange. The Exchange believes that omitting clearing only transactions from the calculation to be fair and reasonable because the fact that a Member is clearing a trade is coincidental to the choice of where to execute that trade. And, because clearing only transactions are not executed on MIAX PEARL, they do not fall within the intended transactions that qualify for the Program. In addition, if the Exchange were to reward the party clearing a trade, the Exchange would possibly be double counting that trade - once for the executing party and once for the clearing party. Furthermore, the Exchange believes that counting incidental Priority Customer-to-Priority Customer transactions, which are not crossing transactions, in the number of options contracts executed on the Exchange by a Member is fair and reasonable because in these situations the Priority Customer is not necessarily choosing to execute against another Priority Customer in order to avoid a transaction fee.

The Exchange believes that its proposal to allow Affiliates to participate in the Program is fair, reasonable and not unfairly discriminatory because it is being offered to all Members of the Exchange on the same terms and conditions. The Exchange believes that allowing both traditional Corporate Affiliates and also Appointed Market Makers and Appointed EEMs to participate in the Program is reasonable and appropriate because it will provide those participants with a potentially greater opportunity to achieve the volume thresholds in the Program. Also, the Exchange believes that allowing Appointed Market Makers and Appointed EEMs to participate

in the Program expands access to the Program to Members that might not otherwise, individually on their own, participate in the Program, which will benefit all market participants by providing greater liquidity on the Exchange, all of which perfects the mechanism for a free and open market and national market system.

The Exchange believes the Program is equitable and reasonable because an increase in volume and liquidity would benefit all market participants by providing more trading opportunities and tighter spreads, even to those market participants that do not participate in the Program. Additionally, the Exchange believes the proposed rule change is consistent with the Act because, as described above, the Program is designed to bring greater volume and liquidity to the Exchange, which will benefit all market participants by providing tighter quoting and better prices, all of which perfects the mechanism for a free and open market and national market system.

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

MIAX PEARL does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change will improve competition by providing market participants with another option when determining where to execute orders and post liquidity.

The Exchange believes that the proposed change would increase both intermarket and intramarket competition by incenting participant Members to direct their orders to the Exchange, which will enhance the quality of quoting and increase the volume of contracts traded here. To the extent that there is an additional competitive burden on non-participant Members, the Exchange believes that this is appropriate because the Program should incent Members to direct additional order flow to the Exchange and thus provide additional liquidity that enhances the quality of its markets and increases the volume of contracts traded here. To the extent that this

purpose is achieved, all of the Exchange's market participants should benefit from the improved market liquidity. Enhanced market quality and increased transaction volume that results from the anticipated increase in order flow directed to the Exchange will benefit all market participants and improve competition on the Exchange.

Given the robust competition for volume among options markets, many of which offer the same products, implementing a program to attract order flow like the one being proposed in this filing is consistent with the above-mentioned goals of the Act. This is especially true for the smaller options markets, such as MIAX PEARL, which is competing for volume with much larger exchanges that dominate the options trading industry. MIAX PEARL has a modest percentage of the average daily trading volume in options, so it is unlikely that the Program could cause any competitive harm to the options market or to market participants. Rather, the Program is an attempt by a small options market to attract order volume away from larger competitors by adopting an innovative pricing strategy, as evidenced by the volume thresholds of the Program that represent fractions of 1% of OCC ADV. The Exchange notes that if the Program resulted in a modest percentage increase in the average daily trading volume in options executing on MIAX PEARL, while such percentage would represent a large volume increase for MIAX PEARL, it would represent a minimal reduction in volume of its larger competitors in the industry. The Exchange believes that the Program will help further competition, because market participants will have yet another option in determining where to execute orders and post liquidity if they factor the benefits of MIAX PEARL equity participation into the determination. The Exchange notes that other exchanges have engaged in the practice of incentivizing increased order flow in order to attract liquidity providers through equity sharing arrangements.<sup>19</sup> In addition, MIAX Options previously adopted substantially similar programs to incentivize

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<sup>19</sup> See *supra* note 12.

increased order flow in order to attract liquidity providers through an equity sharing arrangement.<sup>20</sup>

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

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>21</sup> and Rule 19b-4(f)(2)<sup>22</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

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

Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>);
- or
- Send an e-mail [to rule-comments@sec.gov](mailto:to-rule-comments@sec.gov). Please include File Number SR-PEARL-2018-08 on the subject line.

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<sup>20</sup> See *supra* note 13.

<sup>21</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>22</sup> 17 CFR 240.19b-4(f)(2).

Paper comments:

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

All submissions should refer to File Number SR-PEARL-2018-08. This file number should be included on the subject line if e-mail 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 Web site (<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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly

All submissions should refer to File Number SR-PEARL-2018-08 and should be submitted on or before [insert date 21 days from publication in the Federal Register]. For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>23</sup>

Brent J. Fields  
Secretary

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<sup>23</sup> 17 CFR 200.30-3(a)(12).