

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * <input type="text" value="29"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input type="text" value="2019"/> - * <input type="text" value="27"/>	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 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 type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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Description

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

Proposal to amend the Fee Schedule to establish membership application fees.

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 * <input type="text" value="Michael"/>	Last Name * <input type="text" value="Slade"/>
Title * <input type="text" value="Counsel"/>	
E-mail * <input type="text" value="mslade@miami-holdings.com"/>	
Telephone * <input type="text" value="(609) 897-8499"/>	Fax <input type="text"/>

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 <input type="text" value="09/20/2019"/>	<input type="text" value="Assistant Vice President and Associate Counsel"/>
By <input type="text" value="Dimitriy Kotov"/>	<input type="text" value=""/>
(Name *)	<input type="text" value="dkotov@miami-holdings.com"/>

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 *

Add Remove View

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

Add Remove View

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”)¹ and Rule 19b-4 thereunder,² proposes to amend the MIAX PEARL Fee Schedule (the “Fee Schedule”) to establish one-time membership application fees for MIAX PEARL Members.³

The Exchange previously filed to establish one-time membership application fees on June 28, 2019 (SR-PEARL-2019-22).⁴ That filing was withdrawn on August 27, 2019. It is replaced with the current filing (SR-PEARL-2019-27).

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1, and a copy of the applicable section of the proposed Fee Schedule is attached hereto as Exhibit 5.

(b) Inapplicable.

(c) Inapplicable.

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 January 31, 2019. Exchange staff will advise the Board of Directors of any action taken pursuant to delegated

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ “Member” means an individual or organization that is registered with the Exchange pursuant to Chapter II of the Exchange Rules for purposes of trading on the Exchange as an “Electronic Exchange Member” or “Market Maker.” Members are deemed “members” under the Exchange Act. See Exchange Rule 100.

⁴ See Securities Exchange Act Release No. 86363 (July 12, 2019), 84 FR 34445 (July 18, 2019) (SR-PEARL-2019-22) (the “Second Proposed Rule Change”).

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 Michael Slade, Counsel, at (609) 897-8499.

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

a. Purpose

The Exchange proposes to amend the Fee Schedule to establish one-time membership application fees based upon the applicant's status as either an Electronic Exchange Member⁵ ("EEM") or as a Market Maker.⁶ MIA X PEARL commenced operations as a national securities exchange registered under Section 6 of the Act⁷ on February 6, 2017.⁸ The Exchange adopted its transaction fees and certain of its non-transaction fees in its filing SR-PEARL-2017-10.⁹ In that filing, the Exchange expressly waived the one-time membership application fees to provide an incentive to prospective EEMs and Market Makers to become Members of the Exchange. At that

⁵ "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 Exchange Rule 100. See the Definitions Section of the Fee Schedule.

⁶ "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 Exchange Rule 100. See the Definitions Section of the Fee Schedule.

⁷ 15 U.S.C. 78f.

⁸ See Securities Exchange Act Release No. 79543 (December 13, 2016), 81 FR 92901 (December 20, 2016)(File No. 10-227)(order approving application of MIA X PEARL, LLC for registration as a national securities exchange).

⁹ See Securities Exchange Act Release No. 80061 (February 17, 2017), 82 FR 11676 (February 24, 2017) (SR-PEARL-2017-10).

time, the Exchange waived one-time membership application fees for the Waiver Period¹⁰ and stated that it would provide notice to market participants when the Exchange intended to terminate the Waiver Period.

On March 14, 2019, the Exchange issued a Regulatory Circular that the Exchange would be ending the Waiver Period for one-time membership application fees, among other non-transaction fees, beginning on April 1, 2019.¹¹ The Exchange initially filed the proposal on March 27, 2019, designating the proposed fees effective April 1, 2019.¹² The First Proposed Rule Change was published for comment in the Federal Register on April 12, 2019.¹³ The proposed fees remained in effect until the Exchange withdrew the First Proposed Rule Change on May 20, 2019.¹⁴ The First Proposed Rule Change included additional fee changes to adopt certain other non-transaction fees and to terminate the three-month New Member Non-Transaction Fee Waiver and Waiver Period.¹⁵

¹⁰ “Waiver Period” means, for each applicable fee, the period of time from the initial effective date of the MIAX PEARL Fee Schedule until such time that the Exchange has an effective fee filing establishing the applicable fee. The Exchange will issue a Regulatory Circular announcing the establishment of an applicable fee that was subject to a Waiver Period at least fifteen (15) days prior to the termination of the Waiver Period and effective date of any such applicable fee. See the Definitions Section of the Fee Schedule.

¹¹ See MIAX PEARL Regulatory Circular 2019-09 available at https://www.miaxoptions.com/sites/default/files/circular-files/MIAX_PEARL_RC_2019_09.pdf.

¹² See Securities Exchange Act Release No. 85541 (April 8, 2019), 84 FR 14983 (April 12, 2019) (SR-PEARL-2019-12) (the “First Proposed Rule Change”).

¹³ See id.

¹⁴ See Letter from Gregory P. Ziegler, AVP and Senior Associate Counsel, MIAX PEARL, LLC, to Vanessa Countryman, Acting Secretary, Commission, dated May 17, 2019.

¹⁵ See supra note 12.

The Exchange refiled the proposal on June 28, 2019, designating the proposed fees effective July 1, 2019.¹⁶ The Second Proposed Rule Change was published for comment in the Federal Register on July 18, 2019.¹⁷ The proposed fee changes remained in effect until the Exchange withdrew the Second Proposed Rule Change on August 27, 2019.¹⁸ The Second Proposed Rule Change included additional fee changes to adopt certain other non-transaction fees and to terminate the three-month New Member Non-Transaction Fee Waiver and Waiver Period.¹⁹ The Exchange is now re-filing the proposal to establish one-time membership application fees for EEMs and Market Makers. The Exchange will file separate proposals to establish certain other non-transaction fees and to terminate the New Member Non-Transaction Fee Waiver and Waiver Period.

MIAX PEARL Membership Application Fee

The Exchange proposes to assess a one-time membership application fee based upon the applicant's status as either an EEM or as a Market Maker. The Exchange proposes that applicants for MIAX PEARL Membership as an EEM will be assessed a one-time application fee of \$500. The Exchange proposes that applicants for MIAX PEARL Membership as a Market Maker will be assessed a one-time application fee of \$1,500. The difference in the proposed membership application fee to be charged to EEMs and Market Makers is because of the additional review and resources involved in processing a Market Maker's application, as Market Makers have greater and more complex obligations with respect to doing business on the Exchange. MIAX PEARL's

¹⁶ See supra note 4.

¹⁷ See id.

¹⁸ See Letter from Joseph Ferraro, SVP and Deputy General Counsel, MIAX PEARL, LLC, to Vanessa Countryman, Acting Secretary, Commission, dated August 26, 2019.

¹⁹ See supra note 4.

proposed one-time membership application fees are similar to and generally lower than one-time application fees in place at the Cboe Exchange, Inc. (“Cboe”) (\$3,000 for an individual applicant and \$5,000 for an applicant organization)²⁰ and at Nasdaq ISE, LLC (“Nasdaq ISE”) (\$7,500 per firm for a primary market maker, \$5,500 per firm for a competitive market maker, and \$3,500 per firm for an electronic market maker).²¹ Below is the table for the proposed one-time membership application fee for MIAX PEARL:

Type of Membership	Application Fee
Electronic Exchange Member	\$500.00
Market Maker	\$1,500.00

MIAX PEARL will assess a one-time Membership Application Fee on the earlier of (i) the date the applicant is certified in the membership system, or (ii) once an application for MIAX PEARL membership is finally denied.

Applicability to and Impact on Participants

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”²²

There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more

²⁰ See Cboe Fees Schedule, p. 12, Cboe Trading Permit Holder Application Fees.

²¹ See Nasdaq ISE, Options Rules, Options 7, Pricing Schedule, Section 9. Legal and Regulatory A. Application.

²² See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

than approximately 16% market share.²³ Therefore, no exchange possesses significant pricing power. More specifically, as of September 9, 2019, the Exchange had an approximately 5.30% market share of executed volume of multiply-listed equity and exchange traded fund (“ETF”) options.²⁴ The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can discontinue or reduce use of certain categories of products, or shift order flow, in response to non-transaction and transaction fee changes. For example, on September 28, 2018, the Exchange filed with the Commission a proposal to decrease a transaction fee for certain types of orders (which fee was to be effective October 1, 2018).²⁵ The Exchange experienced an increase in total market share in the month of October 2018, after the proposal went into effect. Accordingly, the Exchange believes that the October 1, 2018 fee change, decreasing a transaction fee, may have contributed to the increase in the Exchange’s market share and, as such, the Exchange believes competitive forces constrain MIAX PEARL’s, and other options exchanges, ability to set non-transaction and transaction fees and market participants can shift order flow based on fee changes instituted by the exchanges.

The proposed adoption of a one-time membership application fee applicable to EEMs and Market Markers would be applied uniformly to each of these market participants. Further, as there are currently 16 registered options exchanges competing for order flow with no single exchange accounting for more than approximately 16% of market share, the Exchange cannot predict with

²³ The Options Clearing Corporation (“OCC”) publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available here: <https://www.theocc.com/market-data/volume/default.jsp>.

²⁴ See *id.*

²⁵ See Securities Exchange Act Release No. 84387 (October 9, 2018), 83 FR 52039 (October 15, 2018)(SR-PEARL-2018-21).

certainty whether any participant is planning to become a Member and thus would be subject to the proposed fees.

b. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act²⁶ in general, and furthers the objectives of Section 6(b)(4) of the Act²⁷ in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes that the proposed change to adopt a one-time membership application fee applicable to EEMs and Market Markers as described above is reasonable in several respects. First, the Exchange is subject to significant competitive forces in the market for options transaction and non-transaction services that constrain its pricing determinations in that market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been

²⁶ 15 U.S.C. 78f(b).

²⁷ 15 U.S.C. 78f(b)(4) and (5).

remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”²⁸

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options transaction services. The Exchange is one of several options venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than approximately 16% of the market share of executed volume of multiply-listed equity and ETF options.²⁹ Therefore, no exchange possesses significant pricing power. More specifically, as of September 9, 2019, the Exchange had approximately a 5.30% market share of executed volume of multiply-listed equity and ETF options.³⁰

The Exchange also believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can discontinue or reduce use of certain categories of products, or shift order flow, in response to non-transaction and transaction fee changes. For example, on September 28, 2018, the Exchange filed with the Commission a

²⁸ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

²⁹ The Options Clearing Corporation (“OCC”) publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available here: <https://www.theocc.com/market-data/volume/default.jsp>.

³⁰ See id.

proposal to decrease a transaction fee for certain types of orders (which fee was to be effective October 1, 2018).³¹ The Exchange experienced an increase in total market share in the month of October 2018, after the proposal went into effect. Accordingly, the Exchange believes that the October 1, 2018 fee change, decreasing a transaction fee, may have contributed to the increase in the Exchange's market share and, as such, the Exchange believes competitive forces constrain MIAX PEARL's, and other options exchanges, ability to set non-transaction and transaction fees and market participants can shift order flow based on fee changes instituted by the exchanges. Further, the Exchange no longer believes it is necessary to waive these fees to attract market participants to the MIAX PEARL market since this market is now established and MIAX PEARL no longer needs to rely on such waivers to attract market participants. The Exchange believes that the proposed change is equitable and not unfairly discriminatory because the elimination of the fee waiver for one-time membership application fees will uniformly apply to all EEMs and Market Makers seeking to become Members of the Exchange. Additionally, The Exchange believes its proposal for a one-time membership application fees applicable to EEMs and Market Markers is reasonable and well within the range of fees assessed among other exchanges, including the Exchange's affiliate, MIAX.³²

The Exchange believes its one-time membership application fees are reasonable, equitable and not unfairly discriminatory. As described above, the one-time application fees are similar to the application fees in place at other options exchanges,³³ and are associated with the time and resources of processing of such applications. The Exchange believes that it is reasonable,

³¹ See Securities Exchange Act Release No. 84387 (October 9, 2018), 83 FR 52039 (October 15, 2018)(SR-PEARL-2018-21).

³² See the MIAX Options Fee Schedule.

³³ See supra notes 20 and 21.

equitable, and not unfairly discriminatory that Market Maker applicants are charged slightly more than EEM applicants because of the additional review and resources involved in processing a Market Maker's application, as Market Makers have greater and more complex obligations with respect to doing business on the Exchange.

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

4. 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.

Intra-Market Competition

The Exchange does not believe that the proposed rule change would place certain market participants at the Exchange at a relative disadvantage compared to other market participants or affect the ability of such market participants to compete. Unilateral action by MIAX PEARL in the assessment of one-time membership application fees will not have an impact on competition. As a more recent entrant in the already highly competitive environment for equity options trading, MIAX PEARL does not have the market power necessary to set prices for services that are unreasonable or unfairly discriminatory in violation of the Act. MIAX PEARL's proposed one-time membership application fees, as described herein, are comparable to fees charged by

other options exchanges for the same or similar services, including those fees assessed by its affiliate, MIAX.³⁴

The Exchange believes that the proposed one-time membership application fees do not place certain market participants at a relative disadvantage to other market participants because the pricing is associated with the Exchange's time and resources to process such applications. The proposed one-time membership application fees do not apply unequally to different size market participants, but instead would allow the Exchange to charge for reviewing and processing Market Maker and EEM membership applications. Accordingly, the proposed one-time membership application fees do not favor certain categories of market participants in a manner that would impose a burden on competition.

Further, the Exchange believes that the proposed rule change will promote transparency by making it clear to EEMs and Market Makers the fees that MIAX PEARL will assess for Membership application to MIAX PEARL. This will permit EEMs and Market Makers to more accurately anticipate and account for the costs of one-time membership application in order to become Members of the Exchange, which promotes consistency.

Inter-Market Competition

The Exchange believes the proposed one-time membership application fees do not place an undue burden on competition on other SROs that is not necessary or appropriate. The Exchange operates in a highly competitive market in which market participants can readily favor one of the 16 competing options venues if they deem fee levels at a particular venue to be excessive.³⁵ Based on publicly-available information, and excluding index-based options, no

³⁴ See the MIAX Options Fee Schedule.

³⁵ See supra note 23.

single exchange has more than 16% market share. Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. As of September 9, 2019, the Exchange had an approximately 5.30% market share³⁶ and the Exchange believes that the ever-shifting market share among exchanges from month to month demonstrates that market participants can discontinue or reduce use of certain categories of products, or shift order flow, in response to fee changes. In such an environment, the Exchange must continually adjust its fees and fee waivers to remain competitive with other exchanges and to attract order flow to the Exchange.

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,³⁷ and Rule 19b-4(f)(2) thereunder³⁸ 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.

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

The proposed rule change is not based on the rules of another exchange or of the

³⁶ Id.

³⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

³⁸ 17 CFR 240.19b-4.

Commission.

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. Completed notice of proposed rule change for publication in the Federal Register.
5. Copy of the applicable section of the MIAX PEARL Fee Schedule.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-PEARL-2019-27

September ____, 2019

Self-Regulatory Organizations: Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by MIAX PEARL, LLC to Amend the MIAX PEARL Fee Schedule

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 20, 2019, MIAX PEARL, LLC (“MIAX PEARL” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange is filing a proposal to amend the MIAX PEARL Fee Schedule (the “Fee Schedule”) to establish one-time membership application fees for MIAX PEARL Members.³

The Exchange previously filed to establish one-time membership application fees on June 28, 2019 (SR-PEARL-2019-22).⁴ That filing was withdrawn on August 27, 2019. It is replaced with the current filing (SR-PEARL-2019-27).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ “Member” means an individual or organization that is registered with the Exchange pursuant to Chapter II of the Exchange Rules for purposes of trading on the Exchange as an “Electronic Exchange Member” or “Market Maker.” Members are deemed “members” under the Exchange Act. See Exchange Rule 100.

⁴ See Securities Exchange Act Release No. 86363 (July 12, 2019), 84 FR 34445 (July 18, 2019) (SR-PEARL-2019-22) (the “Second Proposed Rule Change”).

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

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

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

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

1. Purpose

The Exchange proposes to amend the Fee Schedule to establish one-time membership application fees based upon the applicant's status as either an Electronic Exchange Member⁵ ("EEM") or as a Market Maker.⁶ MIAX PEARL commenced operations as a national securities

⁵ "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 Exchange Rule 100. See the Definitions Section of the Fee Schedule.

⁶ "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 Exchange Rule 100. See the Definitions Section of the Fee Schedule.

exchange registered under Section 6 of the Act⁷ on February 6, 2017.⁸ The Exchange adopted its transaction fees and certain of its non-transaction fees in its filing SR-PEARL-2017-10.⁹ In that filing, the Exchange expressly waived the one-time membership application fees to provide an incentive to prospective EEMs and Market Makers to become Members of the Exchange. At that time, the Exchange waived one-time membership application fees for the Waiver Period¹⁰ and stated that it would provide notice to market participants when the Exchange intended to terminate the Waiver Period.

On March 14, 2019, the Exchange issued a Regulatory Circular that the Exchange would be ending the Waiver Period for one-time membership application fees, among other non-transaction fees, beginning on April 1, 2019.¹¹ The Exchange initially filed the proposal on March 27, 2019, designating the proposed fees effective April 1, 2019.¹² The First Proposed Rule Change was published for comment in the Federal Register on April 12, 2019.¹³ The proposed fees

⁷ 15 U.S.C. 78f.

⁸ See Securities Exchange Act Release No. 79543 (December 13, 2016), 81 FR 92901 (December 20, 2016)(File No. 10-227)(order approving application of MIAX PEARL, LLC for registration as a national securities exchange).

⁹ See Securities Exchange Act Release No. 80061 (February 17, 2017), 82 FR 11676 (February 24, 2017) (SR-PEARL-2017-10).

¹⁰ “Waiver Period” means, for each applicable fee, the period of time from the initial effective date of the MIAX PEARL Fee Schedule until such time that the Exchange has an effective fee filing establishing the applicable fee. The Exchange will issue a Regulatory Circular announcing the establishment of an applicable fee that was subject to a Waiver Period at least fifteen (15) days prior to the termination of the Waiver Period and effective date of any such applicable fee. See the Definitions Section of the Fee Schedule.

¹¹ See MIAX PEARL Regulatory Circular 2019-09 available at https://www.miaxoptions.com/sites/default/files/circular-files/MIAX_PEARL_RC_2019_09.pdf.

¹² See Securities Exchange Act Release No. 85541 (April 8, 2019), 84 FR 14983 (April 12, 2019) (SR-PEARL-2019-12) (the “First Proposed Rule Change”).

¹³ See id.

remained in effect until the Exchange withdrew the First Proposed Rule Change on May 20, 2019.¹⁴ The First Proposed Rule Change included additional fee changes to adopt certain other non-transaction fees and to terminate the three-month New Member Non-Transaction Fee Waiver and Waiver Period.¹⁵

The Exchange refiled the proposal on June 28, 2019, designating the proposed fees effective July 1, 2019.¹⁶ The Second Proposed Rule Change was published for comment in the Federal Register on July 18, 2019.¹⁷ The proposed fee changes remained in effect until the Exchange withdrew the Second Proposed Rule Change on August 27, 2019.¹⁸ The Second Proposed Rule Change included additional fee changes to adopt certain other non-transaction fees and to terminate the three-month New Member Non-Transaction Fee Waiver and Waiver Period.¹⁹ The Exchange is now re-filing the proposal to establish one-time membership application fees for EEMs and Market Makers. The Exchange will file separate proposals to establish certain other non-transaction fees and to terminate the New Member Non-Transaction Fee Waiver and Waiver Period.

MIAX PEARL Membership Application Fee

The Exchange proposes to assess a one-time membership application fee based upon the applicant's status as either an EEM or as a Market Maker. The Exchange proposes that applicants for MIAX PEARL Membership as an EEM will be assessed a one-time application fee of \$500.

¹⁴ See Letter from Gregory P. Ziegler, AVP and Senior Associate Counsel, MIAX PEARL, LLC, to Vanessa Countryman, Acting Secretary, Commission, dated May 17, 2019.

¹⁵ See supra note 12.

¹⁶ See supra note 4.

¹⁷ See id.

¹⁸ See Letter from Joseph Ferraro, SVP and Deputy General Counsel, MIAX PEARL, LLC, to Vanessa Countryman, Acting Secretary, Commission, dated August 26, 2019.

¹⁹ See supra note 4.

The Exchange proposes that applicants for MIAX PEARL Membership as a Market Maker will be assessed a one-time application fee of \$1,500. The difference in the proposed membership application fee to be charged to EEMs and Market Makers is because of the additional review and resources involved in processing a Market Maker’s application, as Market Makers have greater and more complex obligations with respect to doing business on the Exchange. MIAX PEARL’s proposed one-time membership application fees are similar to and generally lower than one-time application fees in place at the Cboe Exchange, Inc. (“Cboe”) (\$3,000 for an individual applicant and \$5,000 for an applicant organization)²⁰ and at Nasdaq ISE, LLC (“Nasdaq ISE”) (\$7,500 per firm for a primary market maker, \$5,500 per firm for a competitive market maker, and \$3,500 per firm for an electronic market maker).²¹ Below is the table for the proposed one-time membership application fee for MIAX PEARL:

Type of Membership	Application Fee
Electronic Exchange Member	\$500.00
Market Maker	\$1,500.00

MIAX PEARL will assess a one-time Membership Application Fee on the earlier of (i) the date the applicant is certified in the membership system, or (ii) once an application for MIAX PEARL membership is finally denied.

Applicability to and Impact on Participants

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably

²⁰ See Cboe Fees Schedule, p. 12, Cboe Trading Permit Holder Application Fees.

²¹ See Nasdaq ISE, Options Rules, Options 7, Pricing Schedule, Section 9. Legal and Regulatory A. Application.

successful in promoting market competition in its broader forms that are most important to investors and listed companies.”²²

There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than approximately 16% market share.²³ Therefore, no exchange possesses significant pricing power. More specifically, as of September 9, 2019, the Exchange had an approximately 5.30% market share of executed volume of multiply-listed equity and exchange traded fund (“ETF”) options.²⁴ The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can discontinue or reduce use of certain categories of products, or shift order flow, in response to non-transaction and transaction fee changes. For example, on September 28, 2018, the Exchange filed with the Commission a proposal to decrease a transaction fee for certain types of orders (which fee was to be effective October 1, 2018).²⁵ The Exchange experienced an increase in total market share in the month of October 2018, after the proposal went into effect. Accordingly, the Exchange believes that the October 1, 2018 fee change, decreasing a transaction fee, may have contributed to the increase in the Exchange’s market share and, as such, the Exchange believes competitive forces constrain MIAX PEARL’s, and other options exchanges, ability to set non-transaction and transaction fees and market participants can shift order flow based on fee changes instituted by the exchanges.

²² See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

²³ The Options Clearing Corporation (“OCC”) publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available here: <https://www.theocc.com/market-data/volume/default.jsp>.

²⁴ See *id.*

²⁵ See Securities Exchange Act Release No. 84387 (October 9, 2018), 83 FR 52039 (October 15, 2018)(SR-PEARL-2018-21).

The proposed adoption of a one-time membership application fee applicable to EEMs and Market Markers would be applied uniformly to each of these market participants. Further, as there are currently 16 registered options exchanges competing for order flow with no single exchange accounting for more than approximately 16% of market share, the Exchange cannot predict with certainty whether any participant is planning to become a Member and thus would be subject to the proposed fees.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act²⁶ in general, and furthers the objectives of Section 6(b)(4) of the Act²⁷ in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes that the proposed change to adopt a one-time membership application fee applicable to EEMs and Market Markers as described above is reasonable in several respects. First, the Exchange is subject to significant competitive forces in the market for options transaction and non-transaction services that constrain its pricing determinations in that market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation

²⁶ 15 U.S.C. 78f(b).

²⁷ 15 U.S.C. 78f(b)(4) and (5).

NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”²⁸

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options transaction services. The Exchange is one of several options venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than approximately 16% of the market share of executed volume of multiply-listed equity and ETF options.²⁹ Therefore, no exchange possesses significant pricing power. More specifically, as of September 9, 2019, the Exchange had approximately a 5.30% market share of executed volume of multiply-listed equity and ETF options.³⁰

The Exchange also believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can discontinue or reduce use of certain categories of products, or shift order flow, in response to non-transaction and transaction

²⁸ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

²⁹ The Options Clearing Corporation (“OCC”) publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available here: <https://www.theocc.com/market-data/volume/default.jsp>.

³⁰ See id.

fee changes. For example, on September 28, 2018, the Exchange filed with the Commission a proposal to decrease a transaction fee for certain types of orders (which fee was to be effective October 1, 2018).³¹ The Exchange experienced an increase in total market share in the month of October 2018, after the proposal went into effect. Accordingly, the Exchange believes that the October 1, 2018 fee change, decreasing a transaction fee, may have contributed to the increase in the Exchange's market share and, as such, the Exchange believes competitive forces constrain MIAX PEARL's, and other options exchanges, ability to set non-transaction and transaction fees and market participants can shift order flow based on fee changes instituted by the exchanges. Further, the Exchange no longer believes it is necessary to waive these fees to attract market participants to the MIAX PEARL market since this market is now established and MIAX PEARL no longer needs to rely on such waivers to attract market participants. The Exchange believes that the proposed change is equitable and not unfairly discriminatory because the elimination of the fee waiver for one-time membership application fees will uniformly apply to all EEMs and Market Makers seeking to become Members of the Exchange. Additionally, The Exchange believes its proposal for a one-time membership application fees applicable to EEMs and Market Markers is reasonable and well within the range of fees assessed among other exchanges, including the Exchange's affiliate, MIAX.³²

The Exchange believes its one-time membership application fees are reasonable, equitable and not unfairly discriminatory. As described above, the one-time application fees are similar to the application fees in place at other options exchanges,³³ and are associated with the time and

³¹ See Securities Exchange Act Release No. 84387 (October 9, 2018), 83 FR 52039 (October 15, 2018)(SR-PEARL-2018-21).

³² See the MIAX Options Fee Schedule.

³³ See supra notes 20 and 21.

resources of processing of such applications. The Exchange believes that it is reasonable, equitable, and not unfairly discriminatory that Market Maker applicants are charged slightly more than EEM applicants because of the additional review and resources involved in processing a Market Maker's application, as Market Makers have greater and more complex obligations with respect to doing business on the Exchange.

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

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.

Intra-Market Competition

The Exchange does not believe that the proposed rule change would place certain market participants at the Exchange at a relative disadvantage compared to other market participants or affect the ability of such market participants to compete. Unilateral action by MIAX PEARL in the assessment of one-time membership application fees will not have an impact on competition. As a more recent entrant in the already highly competitive environment for equity options trading, MIAX PEARL does not have the market power necessary to set prices for services that are unreasonable or unfairly discriminatory in violation of the Act. MIAX PEARL's proposed one-time membership application fees, as described herein, are comparable to fees charged by

other options exchanges for the same or similar services, including those fees assessed by its affiliate, MIAX.³⁴

The Exchange believes that the proposed one-time membership application fees do not place certain market participants at a relative disadvantage to other market participants because the pricing is associated with the Exchange's time and resources to process such applications. The proposed one-time membership application fees do not apply unequally to different size market participants, but instead would allow the Exchange to charge for reviewing and processing Market Maker and EEM membership applications. Accordingly, the proposed one-time membership application fees do not favor certain categories of market participants in a manner that would impose a burden on competition.

Further, the Exchange believes that the proposed rule change will promote transparency by making it clear to EEMs and Market Makers the fees that MIAX PEARL will assess for Membership application to MIAX PEARL. This will permit EEMs and Market Makers to more accurately anticipate and account for the costs of one-time membership application in order to become Members of the Exchange, which promotes consistency.

Inter-Market Competition

The Exchange believes the proposed one-time membership application fees do not place an undue burden on competition on other SROs that is not necessary or appropriate. The Exchange operates in a highly competitive market in which market participants can readily favor one of the 16 competing options venues if they deem fee levels at a particular venue to be excessive.³⁵ Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% market share. Therefore, no exchange possesses significant

³⁴ See the MIAX Options Fee Schedule.

³⁵ See supra note 23.

pricing power in the execution of multiply-listed equity and ETF options order flow. As of September 9, 2019, the Exchange had an approximately 5.30% market share³⁶ and the Exchange believes that the ever-shifting market share among exchanges from month to month demonstrates that market participants can discontinue or reduce use of certain categories of products, or shift order flow, in response to fee changes. In such an environment, the Exchange must continually adjust its fees and fee waivers to remain competitive with other exchanges and to attract order flow to the Exchange.

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:rule-comments@sec.gov). Please include File Number SR-PEARL-2019-27 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-PEARL-2019-27. This file number should be included on the subject line if e-mail is used. To help the Commission process and

³⁶

Id.

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-2019-27 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.³⁷

Vanessa Countryman
Secretary

³⁷ 17 CFR 200.30-3(a)(12).

Exhibit 5

New text is underlined;

Deleted text is in [brackets]

MIAX PEARL Fee Schedule

1) – 2) No change.

3) Membership Fees

a) Application for MIAX PEARL Membership (One-Time Fee)

Type of Membership	Application Fee
Electronic Exchange Member	[Fee waived for the Waiver Period] <u>\$500.00</u>
Market Maker	[Fee waived for the Waiver Period] <u>\$1,500.00</u>

MIAX PEARL will assess a one-time Membership Application Fee on the earlier of (i) the date the applicant is certified in the membership system, or (ii) once an application for MIAX PEARL membership is finally denied.

b) No change.
