

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-89563; File No. SR-PEARL-2020-03)

August 14, 2020

Self-Regulatory Organizations; MIAX PEARL, LLC; Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, to Establish Rules Governing the Trading of Equity Securities

I. Introduction

On January 24, 2020, MIAX PEARL, LLC (“MIAX PEARL” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to adopt rules to govern the trading of cash equities and establish an equities trading facility of the Exchange. The proposed rule change was published for comment in the Federal Register on February 12, 2020.³ On March 25, 2020, the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change, to May 12, 2020.⁴ On May 8, 2020, the Exchange filed Amendment No. 1 to the proposed rule change.⁵ On

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 88132 (February 6, 2020), 85 FR 8053 (February 12, 2020) (“Notice”).

⁴ See Securities Exchange Act Release No. 88476 (March 25, 2020), 85 FR 17929 (March 31, 2020).

⁵ In Amendment No. 1 the Exchange: (i) deleted the definition of “Equity Securities” from proposed Exchange Rule 1901 and made corresponding changes throughout the proposed Exchange Rules to eliminate unnecessary confusion; (ii) substituted references to “PEARL Equities” with “MIAX PEARL Equities” throughout the proposed Exchange Rules; (iii) updated proposed Exchange Rule 2622 (Limit Up-Limit Down Plan and Trading Halts) regarding a Level 3 Market Decline to conform it to recent changes made by each of the national securities exchanges that trade equities and the Financial Industry Regulatory Authority (“FINRA”), and made a corresponding change to proposed

May 12, 2020, the Commission published notice of Amendment No. 1 and instituted proceedings pursuant to Section 19(b)(2)(B) of the Act⁶ to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.⁷ On August 6, the Commission designated a longer period for Commission action on the proposed rule change, as modified by Amendment No. 1.⁸ The Commission has received no comments on the proposed rule change, as modified by Amendment No. 1. This order approves the proposed rule change, as modified by Amendment No. 1.

II. Discussion and Commission Findings

After careful review of the proposed rule change, as modified by Amendment No. 1, the Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁹ Specifically, the Commission finds that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act,¹⁰ which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices; to promote just and

Exchange Rule 2615 (Opening Process); and (iv) modified proposed Exchange Rule 2617(a)(4)(C) and (D) to account for the potential for orders to post and rest at prices that cross contra-side liquidity and also to correct a typographical error in proposed Exchange Rule 2617(a)(4)(D). Amendment No. 1 is available on the Commission's website at: <https://www.sec.gov/comments/sr-pearl-2020-03/srpearl202003-7168815-216600a.pdf>.

⁶ 15 U.S.C. 78s(b)(2)(B).

⁷ See Securities Exchange Act Release No. 88859 (May 12, 2020), 85 FR 29759 (May 18, 2020).

⁸ See Securities Exchange Act Release No. 89502 (August 6, 2020), 85 FR 48746 (August 12, 2020).

⁹ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁰ 15 U.S.C. 78f(b)(5).

equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in securities; 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. Section 6(b)(5) also requires that the rules of an exchange not be designed to permit unfair discrimination among customers, issuers, brokers, or dealers. Further, the Commission finds that the proposed rule change, as amended, is consistent with Section 6(b)(1) of the Act,¹¹ which requires, among other things, that a national securities exchange be so organized and have the capacity to carry out the purposes of the Act, and to comply and enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulation thereunder, and the rules of the exchange, and with Section 6(b)(6) and 6(b)(7) of the Act,¹² which require an exchange to provide fair procedures for the disciplining of members and persons associated with members. The Commission also finds that the proposed rule change, as amended, is consistent with Section 11A of the Act,¹³ and does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.¹⁴ In addition, the Commission finds that the proposed rule change, as amended, is consistent with Section 12(f) of the Act,¹⁵ which governs unlisted trading privileges for securities originally listed on another national securities exchange.

¹¹ 15 U.S.C. 78f(b)(1).

¹² 15 U.S.C. 78f(b)(6) and (b)(7).

¹³ 15 U.S.C. 78k-1.

¹⁴ 15 U.S.C. 78f(b)(8).

¹⁵ 15 U.S.C. 78l(f).

As set forth in the Notice and the Notice of Amendment No. 1, the Exchange proposes to adopt rules governing the trading of cash equities on the Exchange and establish an equities trading facility of the Exchange (referred to as “MIAX PEARL Equities”) that will function in a manner similar to equities trading platforms the Commission has approved for other national securities exchanges.¹⁶ The Exchange’s proposed rules for MIAX PEARL Equities are substantively similar to the corresponding rules of other equities exchanges. The Commission believes that the proposed MIAX PEARL Equities rules raise no new or novel policy matters or issues. As discussed below, the Commission believes that the proposed MIAX PEARL Equities rules are consistent with the Act.

A. MIAX PEARL Equity Members

MIAX PEARL Equities, as a trading facility of the Exchange, will be a fully automated electronic system (“System”) for the trading of cash equity securities.¹⁷ The Exchange will have a new category of Exchange Member participation called “Equity Member.”¹⁸

An Equity Member must be or become a member of the Exchange pursuant to Chapter II (Access) and continue to abide by the requirements of Chapter II of Exchange Rules and the additional requirements of Chapter XX governing participation in MIAX PEARL Equities.¹⁹ An Equity Member must also be a member of another registered exchange that is not registered

¹⁶ MIAX PEARL’s equities rules, including its rules relating to market makers, order types and instructions, priority, execution, and opening processes, are similar to existing exchanges’ trading rules. See, e.g., Rules of the Cboe BZX Exchange, Inc.

¹⁷ See Notice, supra note 3 at 8053, 8056.

¹⁸ See MIAX PEARL Equities Rules 2000-2003.

¹⁹ See MIAX PEARL Equities Rule 2000(b).

solely under Section 6(g) of the Act, or be a member of FINRA.²⁰ Further, an Equity Member that transacts business with public customers must at all times be a member of FINRA.²¹

There will be two types of Equity Members: (1) Equities Order Entry Firms (“OEFs”) and (2) Equities Market Makers. Each Equity Member must be registered as a broker-dealer and have as the principal purpose of being an Equity Member the conduct of a securities business, which shall be deemed to exist if and so long as: (1) the Equity Member has qualified and acts in respect of its business on MIAX PEARL Equities as an OEF, or an Equities Market Maker, or both; and (2) all transactions effected by the Equity Member are in compliance with Section 11(a) of the Act²² and the rules and regulations adopted thereunder.²³ Equity Members may trade equity securities for their own proprietary accounts or, if authorized to do so under applicable law, may conduct business on behalf of customers.²⁴ OEFs are Equity Members representing orders as agent on MIAX PEARL Equities or non-Equities Market Makers conducting proprietary trading as principal.²⁵ An Equity Member may also register as an Equities Market Maker by filing a registration request with the Exchange.²⁶

²⁰ See MIAX PEARL Equities Rule 2001(f). If such other registered exchange has not been designated by the Commission, pursuant to Rule 17d-1 under the Act, to examine Members for compliance with financial responsibility rules, then such applicant must have and maintain a membership in FINRA. See id.

²¹ See MIAX PEARL Equities Rule 2001(f).

²² 15 U.S.C. 78k(a).

²³ See MIAX PEARL Equities Rule 2001(e).

²⁴ See id.

²⁵ See MIAX PEARL Equities Rule 1901.

²⁶ See MIAX PEARL Equities Rule 2605. The Exchange represents that it will not restrict access in any particular equity security until the Exchange has submitted objective standards for restricting access to the Commission for the Commission’s review and approval. See id.

An Equity Member registered as an Equities Market Maker is required to engage in a course of dealing for its own account and to assist in the maintenance of a fair and orderly market.²⁷ Among other things, each Equities Market Maker must, on a daily basis, maintain a two-sided market on a continuous basis during regular market hours for each equity security in which it is registered as an Equities Market Maker.²⁸ Equities Market Makers may withdraw their quotations,²⁹ and may voluntarily terminate their registration with the Exchange.³⁰ Pursuant to the existing procedures set forth in Chapter IX of current Exchange Rules, the Exchange may suspend condition, limit, prohibit or terminate the authority of an Equities Market Maker to enter quotations in one or more authorized securities for violations of applicable requirements or prohibitions.³¹

While using the System, Equity Members and persons employed by or associated with any Equity Member are prohibited from conduct that is: (1) inconsistent with the maintenance of a fair and orderly market; (2) apt to impair public confidence in the operations of the Exchange; or (3) inconsistent with the ordinary and efficient conduct of business.³² Should any such conduct occur, the Exchange may suspend an Equity Member's access to the System following a warning, or terminate an Equity Member's access to the System by written notice.³³

²⁷ See MIAX PEARL Equities Rule 2606.

²⁸ See MIAX PEARL Equities Rule 2606(a)(1).

²⁹ See MIAX PEARL Equities Rule 2607.

³⁰ See MIAX PEARL Equities Rule 2608.

³¹ See MIAX PEARL Equities Rule 2609.

³² See MIAX PEARL Equities Rule 2602(b).

³³ See MIAX PEARL Equities Rule 2602(d).

The Exchange's rules with respect to Equity Member participation, including the proposed affirmative and negative obligations for Equities Market Makers, raise no novel regulatory issues. The Commission believes that these proposed rules are consistent with Section 6(b)(5) of the Act because they are designed to promote just and equitable principles of trade, perfect the mechanism of a national market system and, in general, protect investors and the public interest. The Commission also believes that these proposed rules subject Equity Market Makers and Equity Members to appropriate discipline for improper conduct, consistent with Section 6(b)(6) and 6(b)(7) of the Act.

B. MIAX PEARL Equities Trading System

The Exchange's equities trading System, like its system for options, will be operated as a fully automated electronic order book, and the Exchange will not maintain or operate a physical trading floor.³⁴ The Exchange will be a trading center whose quotations can be "automated quotations" under Rule 600(b)(4).³⁵ In addition, the Exchange is designed to be an "automated trading center" under Rule 600(b)(5) whose best-priced, displayed quotation will be a "protected quotation" under Rules 600(b)(61) and 600(b)(62), and for purposes of Rule 611.³⁶ Only Equity Members and their Sponsored Participants (collectively, "Users") may transact business on MIAX PEARL via the System.³⁷

³⁴ The Exchange represents that the System will leverage the Exchange's current technology, including its customer connectivity, messaging protocols, quotations and execution engine, order router, data feeds, and network infrastructure. See Notice, supra note 3, at 8056.

³⁵ 17 CFR 242.600(b)(4). See also MIAX PEARL Equities Rule 2617(c).

³⁶ 17 CFR 242.600(b)(5), (b)(61) and (b)(62); 17 CFR 242.611. See also MIAX PEARL Equities Rule 2617(c).

³⁷ See MIAX PEARL Equities Rules 2000 and 2602(a)(1). See also Exchange Rule 210 (Sponsored Access to the Exchange).

Order Types and Instructions

Users may submit orders to the System as Limit Orders, Market Orders, or Midpoint Peg Orders.³⁸ Orders may be entered as an odd lot, round lot, or mixed lot.³⁹ The System will support two time-in-force instructions: Immediate-or-Cancel (“IOC”) or Regular Hours Only (“RHO”).⁴⁰ Users may submit orders with the display instructions of Displayed or Non-Displayed, but all orders eligible for display will be automatically defaulted to Displayed unless a User elects otherwise.⁴¹ Users also may submit orders with instructions of Do Not Route,⁴² Post Only,⁴³ Attributable,⁴⁴ and Non-Attributable.⁴⁵ In addition, Users may mark Limit Orders as Intermarket Sweep Orders, which will allow orders so designated to be automatically matched and executed without reference to Protected Quotations at other trading centers.⁴⁶ Users may also choose to designate orders with self-trade protection modifiers to prevent executions against a resting opposite side order originating from the same market participant, Exchange Member, or

³⁸ See MIAX PEARL Equities Rule 2614(a)(1)-(3).

³⁹ See MIAX PEARL Equities Rule 2614(a). Odd lot, round lot, and mixed lot orders are treated in the same manner on the Exchange, except as discussed below regarding the adjustment of an odd-lot price that locks or crosses the Protected NBBO. See MIAX PEARL Equities Rule 2611 and infra note 88 and accompanying text.

⁴⁰ See MIAX PEARL Equities Rule 2614(b). A Market Order may only include a time in force of IOC. See MIAX PEARL Equities Rule 2614(a)(2).

⁴¹ See MIAX PEARL Equities Rule 2614(c)(3) and (4). Market Orders and Mid-Point Peg Orders are not eligible for display. See MIAX PEARL Equities Rule 2614(a)(2) and (3).

⁴² See MIAX PEARL Equities Rule 2614(c)(1).

⁴³ See MIAX PEARL Equities Rule 2614(c)(2).

⁴⁴ See MIAX PEARL Equities Rule 2614(c)(5).

⁴⁵ See MIAX PEARL Equities Rule 2614(c)(6).

⁴⁶ An ISO is not eligible for routing and may include a time-in-force of IOC or RHO. See MIAX PEARL Equities Rule 2614(d).

trading group identifier.⁴⁷ The order types and instructions the Exchange has proposed for its equities trading System raise no new regulatory issues. The Commission believes these proposed rules are consistent with the Act, and Section 6(b)(5) in particular, because the proposed order type functionality offered by the Exchange will enable Exchange Users with varying trading needs to submit orders to the Exchange that are tailored to meet those needs, which should help promote just and equitable principles of trade, foster coordination with persons engaged in facilitating transactions in securities, and remove impediments to and perfect the mechanism of a national market system.

The MIAX PEARL Equities Rules will also provide for Limit Order Price Protection.⁴⁸ The Exchange has proposed that a Limit Order to buy (sell) will be rejected if it is priced at or above (below) the greater of a specified dollar and percentage away from: (1) the Protected Best Offer for Limit Orders to buy, the Protected Best Bid for Limit Orders to sell; or (2) if the Protected Best Offer or Protected Best Bid is unavailable, the consolidated last sale price disseminated during the Regular Trading Hours on trade date; or (3) if the Protected Best Offer or Protected Best Bid and a consolidated last sale price are unavailable, the prior day's Official Closing Price identified as such by the primary listing exchange, adjusted to account for events such as corporate actions and news events.⁴⁹

The Exchange's proposed Limit Order Price Protection functionality differs from that provided by other national securities exchanges in two respects: (i) it permits Equity Members to

⁴⁷ See MIAX PEARL Equities Rule 2614(f).

⁴⁸ See MIAX PEARL Equities Rule 2614(a)(1)(I).

⁴⁹ See MIAX PEARL Equities Rule 1900 (defining the term "PBO" or "Protected NBO" as the national best offer that is a Protected Quotation, and the term "PBB" or "Protected NBB" as the national best bid that is a Protected Quotation).

customize Limit Order Price Protection by specifying a dollar value and percentage limit away from a reference price on a per session basis, in lieu of using the Exchange's default parameters; and (ii) it provides for an alternative reference price when the NBBO and/or last sale price are unavailable.⁵⁰ By permitting Equity Members to customize the Limit Order Price Protection while also maintaining Exchange default protection levels that are applicable in the absence of Equity Member customization, and by providing an alternative reference price when the NBBO and/or last sale price are unavailable, these proposed rules are designed to provide Equity Members with price protection for their limit orders that is reflective of the current trading environment for a given security and is also tailored to their risk profiles.⁵¹ The Commission believes that the Exchange's Limit Order Price Protection functionality is designed to help to protect investors, consistent with the requirements of Section 6(b)(5) of the Act, by ensuring that an Equity Member's limit order may only execute at prices that are within a specified bound of the prevailing market price for a particular security, as reflected by the NBBO or other available reference points if the NBBO is not available.

Opening Procedures

The Exchange will conduct an Opening Process at the start of Regular Trading Hours.⁵² During the Opening Process, the Exchange attempts to match eligible buy and sell orders at the midpoint of the NBBO.⁵³ The midpoint of the NBBO will be calculated differently depending

⁵⁰ See Notice, supra note 3, at 8061.

⁵¹ See id.

⁵² Orders designated as Post Only, ISOs, Market Orders, and orders that include a time-in-force other than RHO are not eligible to participate in the Opening Process. See MIA X PEARL Equities Rule 2615. Self-trade prevention modifiers will be honored during the Opening Process. See MIA X PEARL Equities Rule 2615(a)(2).

⁵³ See MIA X PEARL Equities Rule 2615(b).

on whether the primary listing exchange is NYSE or NYSE American,⁵⁴ or is any other primary listing exchange.⁵⁵

If the conditions to establish the Opening Process do not occur by 9:45:00 a.m. Eastern Time, the Exchange will conduct a Contingent Open by matching all orders eligible to participate in the Opening Process at the midpoint of the then prevailing NBBO.⁵⁶ The Exchange's proposal to match orders at the midpoint of the NBBO as part of the Contingent Open would provide consistent order handling to Users that wish to participate in the MIAX PEARL Equities Opening Process by executing their eligible orders at the midpoint of the NBBO, regardless of whether the opening process occurs at or near 9:30 a.m. Eastern Time, or later as part of a Contingent Open.⁵⁷ If the midpoint of the NBBO is not available for the Contingent Open, all orders will be handled in time sequence, beginning with the order with the oldest timestamp, and be placed on the MIAX PEARL Equities Book, cancelled, executed, or routed to away trading centers in accordance with the terms of the order.⁵⁸ Those Users that do not wish to participate in the Contingent Open may cancel their orders at any time and resubmit those orders after the Contingent Open occurs and continuous trading begins.⁵⁹ While an equity

⁵⁴ See MIAX PEARL Equities Rule 2615(c)(1).

⁵⁵ For any other primary listing exchange, the Opening Process will be priced at the midpoint of the first NBBO subsequent to the first two-sided quotation published by the primary listing exchange after 9:30:00 a.m. Eastern Time. See MIAX PEARL Equities Rules 2615(c)(2).

⁵⁶ See MIAX PEARL Equities Rule 2615(d).

⁵⁷ See Notice, supra note 3, at 8063.

⁵⁸ Users not seeking an execution at the midpoint of the NBBO during the Contingent Open may cancel their orders before 9:45 a.m. and re-enter those orders after the Contingent Open occurs. See Notice, supra note 3, at 8063.

⁵⁹ See id.

security is subject to a halt, suspension, or pause in trading, the Exchange will accept orders for queuing prior to the resumption of trading in the security for participation in the Re-Opening Process.⁶⁰ The Re-Opening Process will occur in the same general manner as the Opening Process.⁶¹

The Commission believes that the proposed opening and re-opening procedures are reasonably designed to provide for an orderly opening or re-opening of trading on MIAX PEARL Equities, and thus are consistent with the Act, and in particular the Section 6(b)(5) goals of removing impediments to the mechanism of a national market system and protecting investors and the public interest. In addition, the Exchange states that other equity exchanges do not perform a Contingent Opening process following their initial opening processes that attempts to match orders at the midpoint of the NBBO.⁶² The Commission believes that the Exchange's proposal to match orders at the midpoint of the NBBO as part of the Contingent Open provides an additional opportunity for marketable contra-side interest to execute at the NBBO midpoint prior to the beginning of continuous trading, and thereby promotes just and equitable principles of trade, the removal of impediments to the mechanism of the national market system, and the protection of investors and the public interest, consistent with Section 6(b)(5) of the Act.⁶³

⁶⁰ See MIAX PEARL Equities Rule 2615(e).

⁶¹ See MIAX PEARL Equities Rule 2615(e)(1).

⁶² See Notice, supra note 3, at 8063 n.61.

⁶³ 15 U.S.C. 78f(b)(5).

Order Priority and Execution

Following the Opening Process, the System will continuously and automatically match orders pursuant to price/display/time priority.⁶⁴ Orders are ranked based on their working price.⁶⁵ For equally-priced trading interest, orders categorized as displayed will have priority over orders categorized as non-displayed.⁶⁶ Within each priority category, orders will be ranked based on time, with each order being assigned a timestamp equal to the time the order is first placed on the MIAX PEARL Equities Book, subject to enumerated exceptions regarding self-trade prevention and certain cancel/replace messages.⁶⁷ The System also will utilize certain collars and constraints in an effort to reduce the occurrence of erroneous trades.⁶⁸ The best-ranked orders to buy and best-ranked orders to sell that are displayable in the MIAX PEARL Equities book and their aggregate displayed size will be available to quotation vendors for dissemination pursuant to the requirements of Rule 602 of Regulation NMS.⁶⁹

MIAX PEARL Equities Rule 2617(a) addresses order execution. The rule provides that an order will be cancelled back to the User if, based on market conditions, User instructions, applicable Exchange Rules and/or the Act and the rules and regulations thereunder, such order is

⁶⁴ See MIAX PEARL Equities Rules 2616(a). See MIAX PEARL Equities Rule 2616(a)(1).

⁶⁵ See MIAX PEARL Equities Rule 2616(a)(1).

⁶⁶ See MIAX PEARL Equities Rule 2616(a)(2).

⁶⁷ See MIAX PEARL Equities Rule 2616(a)(3)-(5).

⁶⁸ See MIAX PEARL Equities Rules 2618 and 2621.

⁶⁹ See MIAX PEARL Rule 2216(b).

not executable, cannot be routed to another trading center and cannot be posted to the MIAX PEARL Equities Book.⁷⁰

MIAX PEARL Equities Rule 2617(a)(1)-(3) provides that the System will comply with all applicable securities laws and regulations, including Regulation NMS Rule 611, Regulation SHO, and the Plan to Address Extraordinary Market Volatility (the “LULD Plan”).⁷¹ MIAX PEARL Equities Rule 2617(a)(4) addresses how (subject to the requirements of Rule 611 and other applicable Commission and Exchange requirements), an incoming order or Aggressing Order would be matched against orders on the MIAX PEARL Equities Book.⁷² Specifically, MIAX PEARL Equities Rule 2617(a)(4)(A)-(B) provides that an Aggressing Order or an incoming order to buy (sell) will be automatically executed to the extent that it is priced at an amount that equals or exceeds (is less than) any order to sell (buy) in the MIAX PEARL Equities Book and is executable.⁷³

MIAX PEARL Equities Rule 2617(a)(4)(C) and (D) further address executions on the MIAX PEARL Equities Book. As initially proposed, MIAX PEARL Equities Rule 2617(a)(4)(C) and (D) set forth how the Exchange would process orders when the MIAX PEARL Equities Book is internally locked.⁷⁴ In Amendment No. 1, the Exchange added

⁷⁰ See MIAX PEARL Equities Rule 2617(a).

⁷¹ See id. Rule 2617(a)(2) specifies that for any execution to occur during Regular Trading Hours, the price must be equal to, or better than, the Protected NBBO unless an exception to Rule 611 applies. See MIAX PEARL Equities Rules 1901 (defining “Protected NBBO”) and 2617(a)(2).

⁷² See MIAX PEARL Equities Rule 1901 (defining “Aggressing Order” as an order to buy (sell) that is or becomes marketable against sell (buy) interest on the MIAX PEARL Equities Book).

⁷³ See MIAX PEARL Equities Rule 2617(a)(4)(A)-(B).

⁷⁴ See Amendment No. 1.

language to these proposed rule provisions to account for the fact that certain orders also may post at prices resulting in a MIAX PEARL Equities Book that is internally crossed.⁷⁵ The Exchange stated that such an internally crossed book may occur when an incoming order of odd lot size designated as Post Only does not execute against a resting Midpoint Peg order pursuant to the Exchange's proposed economic best interest functionality under MIAX PEARL Equities Rule 2614(c)(2).⁷⁶ The Exchange provided an example where this occurs when an incoming displayable odd lot Post Only order would cross a contra-side Midpoint Peg order resting at the midpoint of the PBBO by one half of one cent (\$.005) and post and display at its limit price, crossing the Midpoint Peg order.⁷⁷ The example further reflects where these internally crossed orders would be subsequently executable—specifically, the Midpoint Peg order would no longer be executable at the midpoint of the PBBO and instead would be executable at one-half minimum price variation more aggressive than the displayed price of the odd lot Post Only order,

⁷⁵ Id.

⁷⁶ Id.

⁷⁷ Id. The example assumes that the PBBO is \$10.00 by \$10.05 and there are no orders resting on the MIAX PEARL Equities book. The Exchange states that it has yet to determine the level of fees and rebates it intends to offer, so the example assumes a maker/taker fee structure with a \$.0030 fee for removing liquidity and a \$.0030 rebate for providing liquidity, requiring at least \$.0060 of price improvement for a displayed order designated as Post Only to remove liquidity. The Exchange also states that, assuming it offers lower fees and rebates for non-displayed orders, if the incoming post only order in the example was non-displayed, it would execute against the resting contra-side Midpoint Peg order pursuant to the Exchange's proposed economic best interest functionality under Exchange Rule 2614(c)(2). Further, the Exchange states that if the incoming post only order in the example instead was a displayed round lot, it would have updated the PBBO resulting in the contra-side Midpoint Peg Order being re-priced to the new midpoint of the PBBO and not resulting in a non-displayed internally crossed book. Id.

and the odd lot Post Only order would be executable at its displayed price.⁷⁸ The Exchange modified MIAX PEARL Equities Rule 2617(a)(4)(C) and (D) to acknowledge this possibility.

MIAX PEARL Equities Rule 2617(a)(4)(C), as modified by Amendment No. 1, acknowledges that certain orders, based on their operation and User instructions, are permitted to post and rest on the MIAX PEARL Equities Book at prices that lock or cross contra-side liquidity; provided, however, that the System would never display a locked or crossed market.⁷⁹ The rule further provides that, if an Aggressing Order or an incoming order to buy (sell) would execute upon entry against an order to sell (buy) at the same price as or a price inferior to a resting displayed order to buy (sell), the Aggressing Order or incoming order to buy (sell) will be cancelled or posted to the MIAX PEARL Equities Book and ranked in accordance with MIAX PEARL Equities Rule 2616.⁸⁰

MIAX PEARL Equities Rule 2617(a)(4)(D), as modified by Amendment No. 1, governs the price at which an order is executable when it is posted non-displayed on the PEARL Equities Book and there is a contra-side displayed order at a price which results in an internally locked or crossed book.⁸¹ For securities priced equal to or greater than \$1.00 per share, in the case where a non-displayed order to sell (buy) is posted on the MIAX PEARL Equities Book at a price that locks or crosses a displayed order to buy (sell) pursuant to MIAX PEARL Equities Rule 2617(a)(4)(C) described above, an Aggressing Order or an incoming order to buy (sell) that is a market order or a limit order priced more aggressively than the order to buy (sell) displayed on

⁷⁸ Id.

⁷⁹ See Amendment No. 1; Rule 2617(a)(4)(C).

⁸⁰ See Amendment No. 1; Rule 2617(a)(4)(C).

⁸¹ See Amendment No. 1; Rule 2617(a)(4)(D).

the MIAX PEARL Equities Book will execute against the non-displayed order to sell (buy) resting on the MIAX PEARL Equities Book at one-half minimum price variation greater (less) than the price of the resting displayed order to buy (sell).⁸²

The MIAX PEARL Equities Rules also are designed to address intermarket locks and crosses, as required by Rule 610(d) of Regulation NMS,⁸³ in that they are designed not to disseminate interest that would lock or cross a protected quote, require Users to reasonably avoid displaying interest that locks or crosses any protected quotation, and are reasonably designed to assure the reconciliation of locked or crossed interest.⁸⁴ The MIAX PEARL Equities Rules also provide for the re-pricing of limit orders in order to comply with Rule 201 of Regulation SHO⁸⁵ and the LULD Plan,⁸⁶ and the repricing of non-displayed limit orders to ensure compliance with Rule 611 of Regulation NMS.⁸⁷

Further, with respect to odd lots, the Exchange has proposed that the working and display price of a displayable odd lot order will be adjusted both on arrival and when resting on the MIAX PEARL Equities Book depending on the odd lot order's limit price in relation the Protected NBBO and whether the Protected NBBO itself is locked or crossed, to reduce the potential for odd lot orders to be displayed on the Exchange's proprietary data feed at potentially

⁸² See Amendment No. 1; Rule 2617(a)(4)(D).

⁸³ 17 CFR 242.610(d).

⁸⁴ See MIAX PEARL Equities Rule 2624. See also MIAX PEARL Equities Rule 2614(a)(1) and (g)(1) (relating to price sliding functionality for non-routable limit orders to avoid violations of Rule 610(d) of Regulation NMS, 17 CFR 242.610(d)).

⁸⁵ 17 CFR 242.201. See MIAX PEARL Equities Rule 2614(a)(1) and (g)(3).

⁸⁶ See MIAX PEARL Equities Rules 2614(a)(1) and 2622. See also MIAX PEARL Equities Rule 2617(a)(3) (providing that any executions that occur during Regular Trading Hours must comply with the LULD plan).

⁸⁷ 17 CFR 242.611. See MIAX PEARL Equities Rule 2614(a)(1) and (g)(2).

unexecutable prices.⁸⁸ This functionality differs from that of certain other equity exchanges by re-pricing the odd lot order to the PBB/PBO of the Exchange when the PBB/PBO was previously locked or crossed by an away trading center.⁸⁹ According to the Exchange, this difference will reduce the potential for an odd lot order to appear on the Exchange's proprietary data feeds as though it is locking or crossing the PBBO. The Commission believes that, to the extent Rule 2617 will reduce the potential for odd lot orders to be displayed on the Exchange's data feed at potentially unexecutable prices, this proposed rule is reasonably designed to protect investors and remove impediments to the mechanism of a national market system, consistent with Section 6(b)(5) of the Act.

To meet their regulatory responsibilities under Rule 611(a) of Regulation NMS, other trading centers will be required to have sufficient notice of new protected quotations, as well as all necessary information (such as final technical specifications).⁹⁰ The Commission believes that it would be a reasonable policy and procedure under Rule 611(a) to require that industry participants begin treating MIAX PEARL Equities' best bid and best offer as a protected quotation as soon as possible but no later than 90 days after the date of this order, or such later date as MIAX PEARL Equities begins operation of its equities trading platform. The Commission has taken the same position with other new equities exchanges.⁹¹

⁸⁸ See MIAX PEARL Equities Rule 2611(b). See also Notice, supra note 3 at 8057.

⁸⁹ See Notice, supra note 3, at 8073 n.111.

⁹⁰ See Securities Exchange Act Release No. 53829 (May 18, 2006), 71 FR 30038, 30041 (May 24, 2006) (File No. S7-10-04) (extending the compliance dates for Rule 610 and Rule 611 of Regulation NMS under the Act).

⁹¹ See, e.g., Securities Exchange Act Release Nos. 85828 (May 10, 2019), 84 FR 21841 (May 15, 2019) (File No. 10-234) (order granting registration of Long-Term Stock Exchange, Inc.); and 88806 (May 4, 2020), 85 FR 27451 (File No. 10-237) (order granting registration of MEMX LLC).

In light of the foregoing, the Commission finds that the MIAX PEARL Equities trading rules are consistent with the Act and, in particular, the Section 6(b)(5) requirement that an exchange's rules be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system, and protect investors and the public interest.⁹²

C. Routing

MIAX PEARL Equities will support orders that are designated to be routed to the Protected NBBO as well as orders that will execute only within MIAX PEARL Equities.⁹³ The System will provide a routing service ("Routing Services") for orders when trading interest is not available on MIAX PEARL Equities.⁹⁴ As the Exchange currently does for options,⁹⁵ it will route orders in equity securities via one or more routing brokers that are not affiliated with the Exchange.⁹⁶

For all Routing Services, the Exchange will determine the logic that provides when, how, and where orders are routed away to other trading centers.⁹⁷ The Exchange represents that the

⁹² See 15 U.S.C. 78f(b)(5).

⁹³ However, an order marked "short" when a short sale price test restriction pursuant to Rule 201 of Regulation SHO is in effect is not eligible for routing by the Exchange. See MIAX PEARL Equities Rule 2617(b)(2). An order that is ineligible for routing due to a short sale price test restriction and that includes a time-in-force of IOC will be cancelled upon entry. Id. The Exchange will handle routable orders in connection with the LULD Plan as described in MIAX PEARL Equities Rule 2622(b)(2) and (3).

⁹⁴ See Notice, supra note 3, at 8053.

⁹⁵ See Exchange Rule 529.

⁹⁶ See Notice, supra note 3, at 8066. The Exchange states that this routing process is described under MIAX PEARL Equities Rule 2617(b)(1), which is identical to current Exchange Rule 529 that is applicable to options. See id.

⁹⁷ See MIAX PEARL Equities Rule 2617(b)(1)(A)(iv).

Exchange's routing logic will not provide any advantage to Users when routing orders to away trading centers as compared to other routing methods.⁹⁸ The routing broker will receive routing instructions from the Exchange to route orders to other trading centers and report such executions back to the Exchange.⁹⁹ The routing broker cannot change the terms of an order or the routing instructions, nor does the routing broker have any discretion about where to route an order.¹⁰⁰

The Exchange represents that for each routing broker used by the Exchange, an agreement will be in place between the Exchange and the routing broker that will, among other things, restrict the use of any confidential and proprietary information that the routing broker receives to legitimate business purposes necessary for routing orders at the direction of the Exchange.¹⁰¹ Further, the Exchange will establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between the Exchange and the routing broker, and any other entity, including any affiliate of the routing broker; and, if the routing broker or any of its affiliates engages in any other business activities other than providing routing services to the Exchange, between the segment of the routing broker or affiliate that provides the other business activities and the segment of the routing broker that provides the Routing Services.¹⁰²

⁹⁸ See Notice, supra note 3, at 8066.

⁹⁹ See MIAX PEARL Equities Rule 2617(b)(1)(A)(v).

¹⁰⁰ See MIAX PEARL Equities Rule 2617(b)(1)(A)(v).

¹⁰¹ See Notice, supra note 3, at 8066. See also MIAX PEARL Equities Rule 2617(b)(1)(A).

¹⁰² See MIAX PEARL Equities Rule 2617(b)(1)(A)(i).

The Exchange may not use a routing broker for which the Exchange or any affiliate of the Exchange is the designated examining authority.¹⁰³ In addition, the MIAX PEARL Equities rules state that the Exchange will provide its Routing Services in compliance with the provisions of the Act and the rules thereunder, including, but not limited to, the requirements in Section 6(b)(4) and (5) of the Act that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among an exchange's members and other persons using its facilities, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.¹⁰⁴ The Exchange also represents that it will file a proposed rule change with the Commission pursuant to Section 19(b) of the Act prior to offering additional routing options.¹⁰⁵

The Exchange states that use of its Routing Services to route orders to other market centers is optional.¹⁰⁶ Parties that do not desire to use these services must designate their orders as not available for routing.¹⁰⁷ In addition, any bid or offer entered on the Exchange routed to another trading center through a routing broker that results in an execution shall be binding on the Member that entered such bid or offer.¹⁰⁸ The MIAX PEARL Equities rules with respect to Routing Services raise no new regulatory issues. The Commission believes that the proposed routing rules are consistent with the Act, and further the goals of Section 6(b)(5) in particular, because they are designed to foster coordination with persons engaged in facilitating transactions

¹⁰³ See MIAX PEARL Equities Rule 2617(b)(1)(A)(ii).

¹⁰⁴ See MIAX PEARL Equities Rule 2617(b)(1)(A)(iii).

¹⁰⁵ See Notice, supra note 3, at 8066 n.78.

¹⁰⁶ See id. at 8066.

¹⁰⁷ See id.

¹⁰⁸ See MIAX PEARL Equities Rule 2617(b)(1)(A)(vi).

in securities and to remove impediments to and perfect the mechanism of a national market system, and are not designed to permit unfair discrimination between customers or broker-dealers.

D. Securities Traded: Unlisted Trading Privileges

The Exchange is not proposing to be a listing market for equity securities, but instead will trade equity securities pursuant to unlisted trading privileges (“UTP”). MIAX PEARL Equities Rule 2900 establishes the Exchange’s authority to trade securities on a UTP basis. MIAX PEARL Equities Rule 2900(a) provides that the Exchange may extend UTP to any NMS Stock that is listed on another national securities exchange or with respect to which UTP may otherwise be extended in accordance with Section 12(f) of the Act.¹⁰⁹ MIAX PEARL Equities Rule 2900(a) further provides that any such security would be subject to all Exchange rules applicable to trading on the Exchange, unless otherwise noted. For any UTP security that is a UTP Exchange Traded Product, the Exchange will distribute an information circular prior to the commencement of trading in each such UTP Exchange Traded Product that generally includes the same information as is contained in the information circular provided by the listing exchange.¹¹⁰ Equity Members must provide each purchaser of UTP Exchange Traded Products a written description of the terms and characteristics of those securities, in a form approved by the Exchange or prepared by the open-ended management company issuing such securities, not later

¹⁰⁹ Any such security will be subject to all Exchange rules applicable to trading on the Exchange, unless otherwise noted. See MIAX PEARL Equities Rule 2900. See also Amendment No. 1, supra note 5 (deleting from the MIAX PEARL Equities Rules the originally proposed definition of “Equity Securities” as unnecessary).

¹¹⁰ This includes: (a) the special risks of trading the new Exchange Traded Product; (b) the Exchange Rules that will apply to the new Exchange Traded Product; and (c) information about the dissemination of value of the underlying assets or indices. See MIAX PEARL Equities Rules 2900(b)(1).

than the time a confirmation of the first transaction in such securities is delivered to such purchaser.¹¹¹ Upon request of a customer, an Equity Member must also provide a prospectus for the particular UTP Exchange Traded Product.¹¹²

The Exchange will also impose certain restrictions on Equity Members acting as Equities Market Makers on the Exchange in a UTP Exchange Traded Product that derives its value from one or more currencies, commodities, or derivatives based on one or more currencies or commodities, or is based on a basket or index composed of currencies or commodities.¹¹³ Further, the Exchange will enter into comprehensive surveillance sharing agreements with markets that trade components of the index or portfolio on which the UTP Exchange Traded Product is based to the same extent as the listing exchange's rules require the listing exchange to enter into comprehensive surveillance sharing agreements with such markets.¹¹⁴

Rule 12f-5 under the Act requires an exchange that extends unlisted trading privileges to securities to have in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends unlisted trading privileges. MIAX PEARL Equities Rule 2900 includes a provision that any security traded UTP on the Exchange "shall be subject to all Exchange rules applicable to trading on the Exchange, unless otherwise noted." Accordingly, pursuant to Section 12(f) of the Act and Rule 12f-5 thereunder, MIAX PEARL Equities Rules

¹¹¹ In addition, Equity Members will include a written description with any sales material relating to UTP Exchange Traded Products that is provided to customers or the public, as well as a disclaimer with any other written materials provided by an Equity Member to customers or the public making specific reference to the UTP Exchange Traded Products as an investment vehicle substantially. See MIAX PEARL Equities Rules 2900(b)(2)(B).

¹¹² See MIAX PEARL Equities Rule 2900(b)(2)(C).

¹¹³ See MIAX PEARL Equities Rule 2900(b)(4).

¹¹⁴ See MIAX PEARL Equities Rule 2900(b)(5).

will be permitted to extend unlisted trading privileges to securities of the same class, subject to the trading rules of the Exchange.

The provisions in MIAX PEARL Equities Rules 2900 raise no new regulatory issues, and the Commission therefore finds that the Exchange's approach to the trading of securities on a UTP basis, as set forth in MIAX PEARL Equities Rule 2900, is consistent with Section 12(f) of the Act and Rule 12f-5 thereunder.

E. Regulation

The Exchange represents that it will regulate MIAX PEARL Equities using the Exchange's existing regulatory structure.¹¹⁵ Pursuant to the Exchange's By-Laws, the Chief Regulatory Office of the Exchange will have general supervision of the regulatory operations of the Exchange, which will include responsibility for overseeing the Exchange's surveillance, examination, and enforcement functions and for administering any regulatory services agreements applicable to MIAX PEARL Equities.¹¹⁶ Further, the Exchange's existing Regulatory Oversight Committee will be responsible for overseeing the adequacy and effectiveness of Exchange's regulatory and self-regulatory organization responsibilities, including those applicable to MIAX PEARL Equities.¹¹⁷

As more fully discussed in the Notice, the Exchange has proposed specific business conduct and operational rules for Equity Members which include rules covering similar subject matter as existing Exchange Rules applicable to options Members.¹¹⁸ In addition, the

¹¹⁵ See Notice, supra note 3, at 8071-72.

¹¹⁶ See MIAX PEARL By-Laws, Section 6.10.

¹¹⁷ See MIAX PEARL By-Laws, Section 4.5(c).

¹¹⁸ See Notice, supra note 3, at 8069-70 (discussing MIAX PEARL Equities Rules regarding Fair Practice (Chapter XXI), Books, Records, and Reports (Chapter XXII), Supervision

Exchange's existing rules applicable to the MIAX PEARL options market (current Chapters I through XVIII of the Exchange Rules) will apply to Equity Members and their associated persons, unless a specific MIAX PEARL Equities Rule (in proposed Chapters XIX through XXX of the Exchange Rules) governs or the context otherwise requires.¹¹⁹

Further, the Exchange's By-Laws provide that it has disciplinary jurisdiction over its members, including Equity Members so that it can enforce its members' compliance with its rules and the federal securities laws.¹²⁰ The Exchange's rules also permit it to sanction members for violations of its rules and of the federal securities laws by, among other things, expelling or suspending members, limiting members' activities, functions, or operations, fining or censuring members, or suspending or barring a person from being associated with a member.¹²¹

In addition, the Exchange represents that: (1) the Exchange will join the existing equities industry agreements and establish new agreements, as necessary, pursuant to Section 17(d) of the Act; (2) the Exchange's Regulatory Services Agreement ("RSA") with FINRA will govern many aspects of the regulation and discipline of Members that participate in equities trading, as it does for options market regulation; and (3) the Exchange will authorize Equity Members to trade on MIAX PEARL Equities and conduct surveillance of equities trading as it does for options.¹²²

(Chapter XXIII), Margin (Chapter XXIV), Chapter XXVII (Trading Practice Rules), and other miscellaneous provisions (Chapter XXVIII)).

¹¹⁹ See MIAX PEARL Rule 1900 (Applicability).

¹²⁰ See MIAX PEARL By-Laws Section 9.2. See also MIAX PEARL By-Laws Section 2.1(d).

¹²¹ See Chapter X of Exchange Rules. The Exchange's rules also provide for the imposition of fines for minor rule violations in lieu of commencing disciplinary proceedings.

¹²² See id. at 8071-72.

The Exchange represents that it will establish Rule 17d-2 Plans for Allocation of Regulatory Responsibilities, including, subject to Commission approval: (i) a plan with FINRA pursuant to which the Exchange and FINRA will agree to allocate to FINRA, with respect to common members, regulatory responsibility for overseeing and enforcing certain applicable laws, rules, and regulations of MIAX PEARL Equities; (ii) joining the multi-party plan with FINRA and other national securities exchanges for the surveillance, investigation, and enforcement of common insider trading rules; and (iii) joining the multi-party plan with FINRA and other national securities exchanges for the allocation of regulatory responsibilities with respect to certain Regulation NMS Rules.¹²³

In addition, the Exchange represents that it will: (i) expand its existing RSA with FINRA, pursuant to which FINRA performs various regulatory services on behalf of the Exchange, subject to the Exchange's ultimate responsibility, including the review of membership applications and the conduct of investigations, disciplinary and hearing services; (ii) join the Intermarket Surveillance Group ("ISG"); and (iii) submit a Minor Rule Violation Plan to the Commission under Rule 19d-1(c)(2) of the Act applicable to Equity Members.¹²⁴

According to the Exchange, FINRA currently surveils options trading on behalf of the Exchange pursuant to an existing RSA designed to detect violations of Exchange rules and

¹²³ See Notice, supra note 3, at 8072. Rule 17d-2 provides that any two or more self-regulatory organizations ("SROs") may file with the Commission a plan for allocating among such SROs the responsibility to receive regulatory reports from persons who are members or participants of more than one of such SROs to examine such persons for compliance, or to enforce compliance by such persons, with specified provisions of the Act, the rules and regulations thereunder, and the rules of such SROs, or to carry out other specified regulatory functions with respect to such persons. See 17 CFR 240.17d-2.

¹²⁴ See id.

applicable federal securities laws.¹²⁵ The Exchange represents that this RSA will be expanded to provide for FINRA to also surveil equities trading on MIAX PEARL Equities on behalf of the Exchange.¹²⁶ The Exchange will remain responsible for FINRA's performance under the RSA.¹²⁷

In addition, with respect to exchange traded products traded on MIAX PEARL Equities pursuant to unlisted trading privileges, the Exchange represents that it will enter into a comprehensive surveillance sharing agreement with markets that trade components of the index or portfolio on which shares of an exchange-traded product is based to the same extent as the listing exchange's rules require the listing exchange to enter into a comprehensive surveillance sharing agreement with such markets.¹²⁸

The Exchange has also proposed Rule 2622(e) to comply with the LULD Plan.¹²⁹ MIAX

¹²⁵ See Notice, supra note 3, at 8072.

¹²⁶ See id.

¹²⁷ See id.

¹²⁸ See id. The Exchange states that FINRA, on behalf of the Exchange, may obtain information, and will communicate information as needed, regarding trading in the shares of exchange-traded products, as well as in the underlying exchange-traded securities and instruments with other markets and other entities that are members of ISG. The Exchange may also obtain information regarding trading in such shares and underlying securities and instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. Moreover, the Exchange states that FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by a fund reported to FINRA's Trade Reporting and Compliance Engine. See id.

¹²⁹ In Amendment No. 1, the Exchange updated MIAX PEARL Equities Rules 2615 and 2622 regarding trading halts to reflect recent proposed rule changes filed by all other equity exchanges and FINRA with respect to a Level 3 Market Decline. See supra note 5. When triggered, a Level 3 halt would halt trading market-wide until the next trading day. The changes in Amendment No. 1 would allow for next-day trading to resume in all NMS stocks no differently from any other trading day, and would not need to wait for the primary listing market to reopen trading in a security.

PEARL Equities Rule 2622(e) requires the Exchange to be a Participant in the LULD Plan¹³⁰ and requires that Equity Members comply with the LULD Plan's provisions. MIAX PEARL Equities Rule 2622(e) also describes the Exchange's order handling procedures to comply with the LULD Plan.¹³¹

The Exchange's proposed regulatory structure raises no new regulatory issues. Accordingly, the Commission finds that the Exchange's proposed regulatory structure, including the Exchange's proposed application of existing rules and by-laws to MIAX PEARL Equities and Equity Members' conduct, the Exchange's commitment to establish new or expand existing agreements with third-parties including FINRA for purposes such as surveillance, member discipline, and overseeing and enforcing compliance with MIAX PEARL Equities rules, and proposed Rule 2622(e) requiring compliance with the LULD plan, are consistent with the Act and, in particular, the Section 6(b)(5) requirement that an exchange's rules be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system, and protect investors and the public interest.¹³² The Commission also finds that the Exchange's proposed regulatory structure is consistent with the requirements of Section 6(b)(1) of the Act, which requires an exchange to be so organized and have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its

¹³⁰ The Exchange represents that it intends to become a Participant in the LULD Plan prior to launching MIAX PEARL Equities. See Notice, supra note 3, at 8068, n.87 and Section III.A. infra.

¹³¹ See MIAX PEARL Equities Rule 2622(e), and Notice, supra note 3, at 8068.

¹³² See 15 U.S.C. 78f(b)(5).

members, with the Act and the rules and regulations thereunder, and the rules of the Exchange,¹³³ and with Section 6(b)(6) and 6(b)(7) of the Act,¹³⁴ which require an Exchange to provide fair procedures for the disciplining of members and persons associated with members.

F. Section 11(a) of the Act

Section 11(a)(1) of the Act¹³⁵ prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or an account over which it or its associated person exercises investment discretion (collectively, “covered accounts”) unless an exception applies. Rule 11a2-2(T) under the Act,¹³⁶ known as the “effect versus execute” rule, provides exchange members with an exemption from the Section 11(a)(1) prohibition. Rule 11a2-2(T) permits an exchange member, subject to certain conditions, to effect transactions for covered accounts by arranging for an unaffiliated member to execute transactions on the exchange. To comply with Rule 11a2-2(T)’s conditions, a member: (i) must transmit the order from off the exchange floor; (ii) may not participate in the execution of the transaction once it has been transmitted to the member performing the execution;¹³⁷ (iii) may not be affiliated with the executing member; and (iv) with respect to an account over which the member or an associated person has investment discretion, neither the member nor its associated person may retain any compensation in connection with effecting the transaction except as provided in the Rule.

¹³³ 15 U.S.C. 78f(b)(1).

¹³⁴ 15 U.S.C. 78f(b)(6) and (b)(7).

¹³⁵ 15 U.S.C. 78k(a)(1).

¹³⁶ 17 CFR 240.11a2-2(T).

¹³⁷ This prohibition also applies to associated persons. The member may, however, participate in clearing and settling the transaction.

In a letter to the Commission, the Exchange requests that the Commission concur with the Exchange's conclusion that Equity Members that enter orders into the System satisfy the conditions of Rule 11a2-2(T).¹³⁸ For the reasons set forth below, the Commission believes that Equity Members entering orders into the System could satisfy the requirements of Rule 11a2-2(T).

The Rule's first condition is that orders for covered accounts be transmitted from off the exchange floor. In the context of automated trading systems, the Commission has found that the off-floor transmission condition is met if a covered account order is transmitted from a remote location directly to an exchange's floor by electronic means.¹³⁹ The Exchange has represented that it does not have a physical trading floor, and the System will receive orders from members electronically through remote terminals or computer-to-computer interfaces. The Commission believes that the System satisfies this off-floor transmission condition.

The second condition states that the member and any associated person not participate in the execution of its order after the order has been transmitted. The Exchange represented that at

¹³⁸ See Letter to Vanessa Countryman, Secretary, Commission, from Christopher Solgan, VP, Senior Counsel, MIAX PEARL, dated July 13, 2020 ("MIAX PEARL 11(a) Letter").

¹³⁹ See, e.g., Securities Exchange Act Release Nos. 78101 (June 17, 2016), 81 FR 41141 (June 23, 2016) (order approving IEX exchange registration); 75650 (August 7, 2015), 80 FR 48600 (August 13, 2015) (order approving EDGX Options as an options trading facility of the EDGX Exchange, Inc.); 61419 (January 26, 2010), 75 FR 5157 (February 1, 2010); (order approving the BATS Options as an options trading facility of the BATS Exchange, Inc.); 49068 (January 13, 2004), 69 FR 2775 (January 20, 2004) (order approving the Boston Options Exchange as an options trading facility of the Boston Stock Exchange); 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001) (order approving Archipelago Exchange as electronic trading facility of the Pacific Exchange); 29237 (May 24, 1991), 56 FR 24853 (May 31, 1991) (regarding NYSE's Off-Hours Trading Facility); 15533 (January 29, 1979), 44 FR 6084 (January 31, 1979) ("1979 Release"); and 14563 (March 14, 1978), 43 FR 11542 (March 17, 1978) ("1978 Release") (regarding NYSE's Designated Order Turnaround System).

no time following the submission of an order is an Equity Member or an associated person of the Equity Member able to acquire control or influence over the result or timing of the order's execution.¹⁴⁰ According to the Exchange, the execution of a member's order is determined solely by what quotes and orders, bids, or offers are present in the System at the time the Equity Member submits the order, and the order priority based on the MIAX PEARL Equities Rules.¹⁴¹ Accordingly, the Commission believes that an Equity Member and its associated persons do not participate in the execution of an order submitted to the System.

The third condition states that the order be executed by an exchange member who is unaffiliated with the member initiating the order. The Commission has stated that this condition is satisfied when automated exchange facilities are used, as long as the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange.¹⁴² The Exchange has represented that the design

¹⁴⁰ See MIAX PEARL 11(a) Letter, supra note 138, at 3-4.

¹⁴¹ See id. at 4. The member may cancel or modify the order, or modify the instruction for executing the order, but only from off the floor. The Commission has stated that the non-participation requirement is satisfied under such circumstances, so long as such modifications or cancellations are also transmitted from off the floor. See Securities Exchange Act Release No. 14713 (April 27, 1978), 43 FR 18557 (May 1, 1978) ("1978 Release") (stating that the "non-participation requirement does not prevent initiating members from canceling or modifying orders (or the instructions pursuant to which the initiating member wishes orders to be executed) after the orders have been transmitted to the executing member, provided that any such instructions are also transmitted from off the floor").

¹⁴² In considering the operation of automated execution systems operated by an exchange, the Commission has noted that while there is not an independent executing exchange member, the execution of an order is automatic once it has been transmitted into the system. Because the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange, the Commission has stated that executions obtained through these systems satisfy the independent execution requirement of Rule 11a2-2(T). See 1979 Release, supra note 139.

of the System ensures that no Equity Member has any special or unique trading advantage in the handling of its orders after transmitting its orders to the Exchange.¹⁴³ Based on the Exchange's representation that the design of the System ensures that no Equity Member has any special or unique trading advantage in the handling of its orders after transmitting its orders to the Exchange, the Commission believes that the System satisfies this condition of Rule 11a2-2(T).

Fourth, in the case of a transaction effected for an account with respect to which the initiating member or an associated person thereof exercises investment discretion, neither the initiating member nor any associated person thereof may retain any compensation in connection with effecting the transaction, unless the person authorized to transact business for the account has expressly provided otherwise by written contract referring to Section 11(a) of the Act and Rule 11a2-2(T) thereunder.¹⁴⁴ Equity Members trading for covered accounts over which they exercise investment discretion must comply with this condition in order to rely on the rule's exemption.¹⁴⁵

¹⁴³ See MIAX PEARL 11(a) Letter, supra note 138, at 4.

¹⁴⁴ 17 CFR 240.11a2-2(T)(a)(2)(iv). In addition, Rule 11a2-2(T)(d) requires a member or associated person authorized by written contract to retain compensation, in connection with effecting transactions for covered accounts over which such member or associated persons thereof exercises investment discretion, to furnish at least annually to the person authorized to transact business for the account a statement setting forth the total amount of compensation retained by the member in connection with effecting transactions for the account during the period covered by the statement. See 17 CFR 240.11a2-2(T)(d). See also 1978 Release, supra note 141 (stating “[t]he contractual and disclosure requirements are designed to assure that accounts electing to permit transaction-related compensation do so only after deciding that such arrangements are suitable to their interests”).

¹⁴⁵ See MIAX PEARL 11(a) Letter, supra note 138, at 4.

III. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁴⁶ that the proposed rule change (SR-PEARL-2020-03), as modified by Amendment No. 1 thereto, be, and it hereby is, approved.

Although the Commission's approval of the proposed rule change is final, and the proposed rules are therefore effective, it is further ordered that the operation of MIAX PEARL Equities is conditioned on the satisfaction of the requirements below:

A. Participation in National Market System Plans Relating to Equities Trading. MIAX PEARL must join all relevant national market system plans related to equities trading, including: (1) the Consolidated Tape Association Plan, the Consolidated Quotation Plan, and the Nasdaq UTP Plan (or any successors thereto); (2) the National Market System Plan to Address Extraordinary Market Volatility; and (3) the National Market System Plan Establishing Procedures Under Rule 605 of Regulation NMS.

B. Regulatory Services Agreement and Rule 17d-2 Agreements. MIAX PEARL must ensure that all necessary changes are made to its RSA with FINRA and must be a party to the multi-party Rule 17d-2 agreements applicable to equities trading and equities market surveillance.

C. Intermarket Surveillance Group. MIAX PEARL must join the Intermarket Surveillance Group.

D. Minor Rule Violation Plan. MIAX PEARL must submit a Minor Rule Violation Plan to address Equity Members.

¹⁴⁶ 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴⁷

J. Matthew DeLesDernier
Assistant Secretary

¹⁴⁷ 17 CFR 200.30-3(a)(12).