

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-90562; File No. SR-PEARL-2020-29)

December 3, 2020

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Exchange's Certificate of Formation

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 24, 2020, MIAX PEARL, LLC ("MIAX PEARL" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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 Exchange's Amended and Restated Certificate of Formation (the "Certificate of Formation").

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

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

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

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

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

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

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

1. Purpose

The Exchange proposes to amend the Certificate of Formation to make several corrective edits and clarifying changes. On February 11, 2016, the Exchange executed the original Certificate of Formation. On October 28, 2020, the Exchange filed its proposal to amend the Certificate of Formation, among other corporate documents, to make several non-substantive, administrative and clarifying changes.<sup>3</sup> The Initial Proposal included changes to the title of the Certificate of Formation to be amended to be titled the “Amended and Restated Certificate of Formation of MIAX PEARL, LLC.” On November 10, 2020, the Commission published for comment the Initial Proposal, which granted the Exchange’s request for waiver of the 30-day operative delay.<sup>4</sup>

The Exchange now proposes to amend the title of the Certificate of Formation to delete the words “Amended and” in order to accurately reflect the amended document that was filed with the Secretary of State for the State of Delaware, titled the “Restated Certificate of Formation of MIAX PEARL, LLC.”<sup>5</sup> The Exchange also proposes to amend the second

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<sup>3</sup> See Securities Exchange Act Release No. 90394 (November 10, 2020) (SR-PEARL-2020-23) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Exchange’s Certificate of Formation, Amended and Restated Limited Liability Company Agreement, and the By-Laws) (the “Initial Proposal”).

<sup>4</sup> See id.

<sup>5</sup> The Certificate of Formation is available the Exchange’s website, at [https://www.miaxoptions.com/sites/default/files/page-files/MIAX\\_PEARL\\_Restated\\_Certificate\\_of\\_Formation\\_11122020.pdf](https://www.miaxoptions.com/sites/default/files/page-files/MIAX_PEARL_Restated_Certificate_of_Formation_11122020.pdf).

sentence in the first paragraph of the Certificate of Formation to delete the words “amending and” in order to clarify that the amended document is the “Restated Certificate of Formation of MIAX PEARL, LLC.” With the proposed changes, the first paragraph of the Certificate of Formation is as follows:

This filing has been executed and filed in accordance with Section 18-208 of the Limited Liability Company Act. This document is being executed for the purpose of restating the original Certificate of Formation, filed on February 11, 2016, under file number: 5880323.

The purpose of the proposed changes to the Certificate of Formation are to ensure that the Exchange’s Certificate of Formation accurately reflects the correct filed document in order to reduce potential investor or market participant confusion.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>6</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>7</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>8</sup> requirement

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<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> Id.

that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed changes to the Certificate of Formation are designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest. The Exchange believes that the proposed changes are non-substantive, corrective edits and clarifying changes and will reduce potential investor or market participant confusion regarding the Exchange's Certificate of Formation. Further, the Exchange believes the proposed changes are not material and will have no impact on the governance, ownership, or operations of the Exchange.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed rule change will impose any burden on intra-market and inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed changes are not intended to address competitive issues but rather are corrective, non-substantive changes that are concerned solely with correcting the title of the Certificate of Formation to reflect current, accurate information.

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

Written comments were neither solicited nor received.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>11</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>12</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. As the proposed rule change raises no novel issues and merely corrects the title of the Exchange's Certificate of Formation, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.<sup>13</sup>

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<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>13</sup> For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

#### IV. Solicitation of Comments

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

##### Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-PEARL-2020-29 on the subject line.

##### Paper Comments:

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

All submissions should refer to File Number SR-PEARL-2020-29. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the

proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-PEARL-2020-29, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>14</sup> 17 CFR 200.30-3(a)(12).