

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 26

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. * SR 2022 - * 46

Amendment No. (req. for Amendments *)

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"/>
---	--------------------------------------	-------------------------------------	---	---	--

Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>
--------------------------------	---	-------------------------------------

Rule

<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
Section 806(e)(1) *

Section 806(e)(2) *

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 3C(b)(2) *

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

Description

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

Proposal to amend the MIAX Pearl Options Fee Schedule to remove the Monthly Volume Credit.

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 * Michael Last Name * Slade

Title * AVP, Associate Counsel

E-mail * mslade@miami-holdings.com

Telephone * (609) 955-0460 Fax

Signature

Pursuant to the requirements of the Securities Exchange of 1934, MIAX PEARL, LLC has duty caused this filing to be signed on its behalf by the undersigned thereunto duty authorized.

Date 11/02/2022 (Title *)

By Michael Slade AVP, Associate Counsel
(Name *)

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

Michael Slade Date: 2022.11.02 15:06:03 -04'00'

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

Add Remove View

SR-PEARL-2022-46 - 19b4 Remove M

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

SR-PEARL-2022-46 - Exhibit 1.docx

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 Advanced Notice by Clearing Agencies *

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 2- Notices, Written Comments, Transcripts, Other Communications

Add Remove View

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 Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

Add Remove View

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 Sent As Paper Document

Exhibit 4 - Marked Copies

Add Remove View

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

SR-PEARL-2022-46 - Exhibit 5 Remov

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

Add Remove View

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 Options Fee Schedule (the “Fee Schedule”) to remove the “Monthly Volume Credit” from the Fee Schedule.

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 or his designee pursuant to authority delegated by the MIAX Pearl Board of Directors on June 16, 2022. Exchange staff will advise the Board of Directors of any action taken pursuant to delegated authority. No other action by the Exchange is necessary for the filing of the proposed rule change.

Questions and comments on the proposed rule change may be directed to Michael Slade, Assistant Vice President, Associate 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

The Exchange commenced operations in February 2017³ and adopted its initial fee schedule.⁴ In 2018, as the Exchange's market share increased,⁵ the Exchange adopted a Monthly Volume Credit⁶ to continue to attract order flow and increase membership by lowering the costs for Members.⁷ The Exchange believes that the Monthly Volume Credit has served its purpose of incentivizing market participants to trade on the Exchange as the Exchange's market share continues to grow and increase since the credits were established.⁸ Therefore, the Exchange now proposes to remove the Monthly Volume Credit from the Fee Schedule.

The Exchange proposes to amend the Definitions section of the Fee Schedule to delete the definition and remove the credits applicable to the Monthly Volume Credit for Members. The Exchange established the Monthly Volume Credit in 2018⁹ to encourage Members to send increased Priority Customer¹⁰ order flow to the Exchange, which the Exchange applied as a

³ See MIAX PEARL Successfully Launches Trading Operations, dated February 6, 2017, available at https://www.miaxoptions.com/sites/default/files/alert-files/MIAX_Press_Release_02062017.pdf.

⁴ See Securities Exchange Act Release No. 80061 (February 17, 2017), 82 FR 11676 (February 24, 2017) (SR-PEARL-2017-10).

⁵ The Exchange experienced a monthly average trading volume in equity options of 3.94% for the month of March 2018. See Market at a Glance, available at www.miaxoptions.com (last visited November 2, 2022).

⁶ See Securities Exchange Act Release No. 82867 (March 13, 2018), 83 FR 12044 (March 19, 2018) (SR-PEARL-2018-07).

⁷ The term "Member" means an individual or organization that is registered with the Exchange pursuant to Chapter II of 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 and the Definitions Section of the Fee Schedule.

⁸ The Exchange experienced a monthly average trading volume in equity options of 4.35% for the month of October 2022. See Market at a Glance, *supra* note 5 (last visited November 2, 2022).

⁹ See *supra* note 6.

¹⁰ The term "Priority Customer" means a person or entity that (i) is not a broker or dealer in

metric to the assessment of non-transaction fees for that Member. During the period when the Monthly Volume Credit was in effect (as further described below), the Exchange applied a different Monthly Volume Credit depending on whether the Member connected to the Exchange via the FIX Interface¹¹ or MEO Interface.¹² During the period when the Monthly Volume Credit was in effect, the Exchange assessed the Monthly Volume Credit to each Member that had executed Priority Customer volume along with that of its affiliates,¹³ not including Excluded

securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial accounts(s). The number of orders shall be counted in accordance with Interpretation and Policy .01 of Exchange Rule 100. See the Definitions Section of the Fee Schedule and Exchange Rule 100, including Interpretation and Policy .01.

¹¹ The term “FIX Interface” means the Financial Information Exchange interface for certain order types as set forth in Exchange Rule 516. See the Definitions Section of the Fee Schedule and Exchange Rule 100.

¹² The term “MEO Interface” or “MEO” means a binary order interface for certain order types as set forth in Rule 516 into the MIAX Pearl System. See the Definitions Section of the Fee Schedule and Exchange Rule 100.

¹³ “Affiliate” means (i) an affiliate of a Member of at least 75% common ownership between the firms as reflected on each firm’s Form BD, Schedule A, or (ii) the Appointed Market Maker of an Appointed EEM (or, conversely, the Appointed EEM of an Appointed Market Maker). An “Appointed Market Maker” is a MIAX Pearl Market Maker (who does not otherwise have a corporate affiliation based upon common ownership with an EEM) that has been appointed by an EEM and an “Appointed EEM” is an EEM (who does not otherwise have a corporate affiliation based upon common ownership with a MIAX Pearl Market Maker) that has been appointed by a MIAX Pearl Market Maker, pursuant to the following process. A MIAX Pearl Market Maker appoints an EEM and an EEM appoints a MIAX Pearl Market Maker, for the purposes of the Fee Schedule, by each completing and sending an executed Volume Aggregation Request Form by email to membership@miaxoptions.com no later than 2 business days prior to the first business day of the month in which the designation is to become effective. Transmittal of a validly completed and executed form to the Exchange along with the Exchange’s acknowledgement of the effective designation to each of the Market Maker and EEM will be viewed as acceptance of the appointment. The Exchange will only recognize one designation per Member. A Member may make a designation not more than once every 12 months (from the date of its most recent designation), which designation shall remain in effect unless or until the Exchange receives written notice submitted 2 business days prior to the first business day of the month from either Member indicating that the appointment has been terminated. Designations will become

Contracts,¹⁴ of at least 0.30% of MIAX Pearl-listed Total Consolidated Volume (“TCV”),¹⁵ as set forth in the following table:

Type of Member Connection	Monthly Volume Credit
Member that connects via the FIX Interface	\$250
Member that connects via the MEO Interface	\$1,000

If a Member connected via both the MEO Interface and FIX Interface and qualified for the Monthly Volume Credit based upon its Priority Customer volume, the greater Monthly Volume Credit would apply to such Member. During the periods when the Monthly Volume Credit was in effect, the Monthly Volume Credit was a single, once-per-month credit towards the aggregate monthly total of non-transaction fees assessable to a Member.

The Exchange proposes to amend the Definitions section of the Fee Schedule to delete the definition and remove the Monthly Volume Credit. The Exchange established the Monthly Volume Credit when it first launched operations to encourage Members to increase their order flow by providing a credit to those that exceeded a volume threshold. The Exchange believes that the Exchange’s existing Priority Customer rebates and fees will continue to allow the Exchange to remain highly competitive and continue to attract order flow and maintain market share even without the Monthly Volume Credit.¹⁶

operative on the first business day of the effective month and may not be terminated prior to the end of the month. Execution data and reports will be provided to both parties. See the Definitions Section of the Fee Schedule.

¹⁴ “Excluded Contracts” means any contracts routed to an away market for execution. See the Definitions Section of the Fee Schedule.

¹⁵ “TCV” means total consolidated volume calculated as the total national volume in those classes listed on MIAX Pearl for the month for which the fees apply, excluding consolidated volume executed during the period of time in which the Exchange experiences an Exchange System Disruption (solely in the option classes of the affected Matching Engine). See the Definitions Section of the Fee Schedule.

¹⁶ See, generally, Fee Schedule, Section 1)a).

Implementation and Procedural History

The proposed rule change will be immediately effective. The Exchange initially filed this proposal to remove the Monthly Volume Credit (and monthly credits associated with Trading Permits) on July 1, 2021, with the proposed fees being immediately effective.¹⁷ In that proposal, the Exchange also proposed to increase its Trading Permit fees. Between August 2021 and September 2022, the Exchange withdrew and refiled the proposed rule change, each time to meaningfully attempt to provide additional justification for the proposed fee changes, provide enhanced details regarding the Exchange's cost methodology or to supplement its competition based arguments.¹⁸ The Commission received three comment letters from one commenter on the various filings.¹⁹ On October 25, 2022, the Exchange withdrew its latest proposal and submitted a revised proposal to only remove the Monthly Volume Credit (SR-PEARL-2022-44, which was not noticed by the Commission). On November 2, 2022, the Exchange withdrew SR-PEARL-2022-44 and now resubmits a revised proposal to only remove the Monthly Volume Credit.

b. Statutory Basis

¹⁷ See Securities Exchange Act Release No. 92366 (July 9, 2021), 86 FR 37379 (SR-PEARL-2021-32).

¹⁸ See Securities Exchange Act Release Nos. 92797 (August 27, 2021), 86 FR 49399 (September 2, 2021) (SR-PEARL-2021-32) ("Suspension Order 1"); 93555 (November 10, 2021), 86 FR 64254 (November 17, 2021) (SR-PEARL-2021-54); 93895 (January 4, 2022), 87 FR 1217 (January 10, 2022) (SR-PEARL-2021-59); 94287 (February 18, 2022), 87 FR 10837 (February 25, 2022) (SR-PEARL-2022-05) ("Suspension Order 2"); 94696 (April 12, 2022), 87 FR 22987 (April 18, 2022) (SR-PEARL-2022-09); 94993 (May 26, 2022), 87 FR 33518 (June 2, 2022) (SR-PEARL-2022-23); SR-PEARL-2022-28; 95419 (August 4, 2022), 87 FR 48702 (August 10, 2022) (SR-PEARL-2022-30); 95775 (September 15, 2022), 87 FR 57544 (September 20, 2022) (SR-PEARL-2022-35).

¹⁹ See Letters from Richard J. McDonald, Susquehanna International Group, LLC ("SIG"), to Vanessa Countryman, Secretary, Commission, dated September 28, 2021 and March 15, 2022, and Letter from Brian Sopinsky, General Counsel, SIG, to Vanessa Countryman, Secretary, Commission, dated May 9, 2022.

The Exchange believes that its proposal to amend the Fee Schedule is consistent with Section 6(b) of the Act²⁰ in general, and furthers the objectives of Section 6(b)(4) of the Act²¹ 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 proposed changes to the Fee Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for order flow, which constrains its pricing determinations. The fact that the market for order flow is competitive has long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated, “[n]o one disputes that competition for order flow is ‘fierce.’ ... As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’....”²²

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention to determine prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, 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

²⁰ 15 U.S.C. 78f(b).

²¹ 15 U.S.C. 78f(b)(4).

²² See *NetCoalition*, 615 F.3d at 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”²³

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 and services, terminate an existing membership or determine to not become a new member, and/or shift order flow, in response to transaction fee changes. For example, on February 28, 2019, the Exchange filed with the Commission a proposal to increase Taker fees in certain Tiers for options transactions in certain Penny classes for Priority Customers and decrease Maker rebates in certain Tiers for options transactions in Penny classes for Priority Customers (which fee was to be effective March 1, 2019).²⁴ The Exchange experienced a decrease in total market share for the month of March 2019, after the proposal went into effect. Accordingly, the Exchange believes that its March 1, 2019, fee change, to increase certain transaction fees and decrease certain transaction rebates, may have contributed to the decrease in MIAX Pearl’s market share and, as such, the Exchange believes competitive forces constrain the Exchange’s, and other options exchanges, ability to set transaction fees and market participants can shift order flow based on fee changes instituted by the exchanges.

The Exchange believes its proposal to remove the Monthly Volume Credit is reasonable, equitable and not unfairly discriminatory because all market participants will no longer be offered the ability to achieve the extra credits associated with the Monthly Volume Credit for submitting Priority Customer volume to the Exchange. The Exchange believes it is reasonable

²³ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

²⁴ See Securities Exchange Act Release No. 85304 (March 13, 2019), 84 FR 10144 (March 19, 2019) (SR-PEARL-2019-07).

and equitable to remove the Monthly Volume Credit from the Fee Schedule for business and competitive reasons. The Exchange established the Monthly Volume Credit when it first launched operations to encourage Members to increase their order flow by providing a credit to those that exceeded a volume threshold. The Exchange believes that the Exchange's existing Priority Customer rebates and fees will continue to allow the Exchange to remain highly competitive and continue to attract order flow and maintain market share even without the Monthly Volume Credit.²⁵

The Exchange further believes its proposal to remove the Monthly Volume Credit is reasonable because the Exchange originally adopted the Monthly Volume Credit to attract order flow to increase the Exchange's market share. The Exchange believes that the Monthly Volume Credit has served its purpose of incentivizing market participants to trade on the Exchange as the Exchange's market share continues to grow and increase since the credit was established.²⁶ Therefore, the Exchange believes it is reasonable to remove the Monthly Volume Credit from the Fee Schedule.

Lastly, the Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act in that it is not designed to permit unfair discrimination between customers, issuers, brokers and dealers because the Monthly Volume Credit will no longer be available to any Member and all Members would now be subject to the same level of non-transaction fees regardless of the amount of Priority Customer volume they execute on the Exchange.

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

²⁵ See Fee Schedule, Section 1)a).

²⁶ The Exchange experienced a monthly average trading volume in equity options of 4.35% for the month of October 2022. See Market at a Glance, supra note 5 (last visited November 2, 2022).

In accordance with Section 6(b)(8) of the Act,²⁷ the Exchange believes that the proposed rule change would not impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intra-Market Competition

The Exchange believes the removal of the Monthly Volume Credit will not place certain market participants at a relative disadvantage to other market participants because, in order to attract order flow, the Exchange established this credit to lower the initial fixed cost for Members. The Exchange now believes that it is appropriate to remove this credit in light of the current operating conditions, including the Exchange's overall membership and the current type and amount of volume executed on the Exchange. The Exchange believes that the Exchange's current rebates and fees will still allow the Exchange to remain highly competitive such that the Exchange should continue to attract order flow and maintain market share.²⁸ Lastly, the proposed fee change will not impact intra-market competition because it will apply to all Members equally.

Inter-Market Competition

The Exchange operates in a highly competitive market in which market participants can readily favor one of the 15 competing options venues if they deem fee levels at a particular venue to be excessive. Based on publicly-available information, and excluding index-based options, no single exchange has more than approximately 16% market share. Therefore, no exchange possesses significant pricing power regarding memberships or in the execution of multiply-listed equity and exchange-traded fund ("ETF") options order flow. Over the course of

²⁷ 15 U.S.C. 78f(8).

²⁸ See, generally, Fee Schedule, Section 1)a).

2021 and 2022, the Exchange's market share has fluctuated between approximately 3-6% of the U.S. equity options industry.²⁹ The Exchange is not aware of any evidence that a market share of approximately 3-6% provides the Exchange with anti-competitive pricing power when it comes to competition for memberships. The Exchange believes that the ever-shifting market share among exchanges from month to month demonstrates that market participants can discontinue memberships in response to fee changes. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract and retain memberships on the Exchange.

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

The Exchange responded to comment letters in a prior proposal.³⁰

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,³¹ and Rule 19b-4(f)(2) thereunder³² 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**

²⁹ See supra note 5.

³⁰ See supra note 18.

³¹ 15 U.S.C. 78s(b)(3)(A)(ii).

³² 17 CFR 240.19b-4.

The proposed rule change is not based on the rules of another exchange or of the 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 sections of the Fee Schedule.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-PEARL-2022-46)

November ____, 2022

Self-Regulatory Organizations: Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by MIAX PEARL, LLC to Amend the MIAX Pearl Options 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 November __, 2022, 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 Options Fee Schedule (the “Fee Schedule”) to remove the “Monthly Volume Credit” from the Fee Schedule.

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

¹ 15 U.S.C. 78s(b)(1).

² 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 commenced operations in February 2017³ and adopted its initial fee schedule.⁴ In 2018, as the Exchange's market share increased,⁵ the Exchange adopted a Monthly Volume Credit⁶ to continue to attract order flow and increase membership by lowering the costs for Members.⁷ The Exchange believes that the Monthly Volume Credit has served its purpose of incentivizing market participants to trade on the Exchange as the Exchange's market share continues to grow and increase since the credits were established.⁸ Therefore, the Exchange now proposes to remove the Monthly Volume Credit from the Fee Schedule.

³ See MIAX PEARL Successfully Launches Trading Operations, dated February 6, 2017, available at https://www.miaxoptions.com/sites/default/files/alert-files/MIAX_Press_Release_02062017.pdf.

⁴ See Securities Exchange Act Release No. 80061 (February 17, 2017), 82 FR 11676 (February 24, 2017) (SR-PEARL-2017-10).

⁵ The Exchange experienced a monthly average trading volume in equity options of 3.94% for the month of March 2018. See Market at a Glance, available at www.miaxoptions.com (last visited November 2, 2022).

⁶ See Securities Exchange Act Release No. 82867 (March 13, 2018), 83 FR 12044 (March 19, 2018) (SR-PEARL-2018-07).

⁷ The term "Member" means an individual or organization that is registered with the Exchange pursuant to Chapter II of 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 and the Definitions Section of the Fee Schedule.

⁸ The Exchange experienced a monthly average trading volume in equity options of 4.35% for the month of October 2022. See Market at a Glance, *supra* note 5 (last visited November 2, 2022).

The Exchange proposes to amend the Definitions section of the Fee Schedule to delete the definition and remove the credits applicable to the Monthly Volume Credit for Members. The Exchange established the Monthly Volume Credit in 2018⁹ to encourage Members to send increased Priority Customer¹⁰ order flow to the Exchange, which the Exchange applied as a metric to the assessment of non-transaction fees for that Member. During the period when the Monthly Volume Credit was in effect (as further described below), the Exchange applied a different Monthly Volume Credit depending on whether the Member connected to the Exchange via the FIX Interface¹¹ or MEO Interface.¹² During the period when the Monthly Volume Credit was in effect, the Exchange assessed the Monthly Volume Credit to each Member that had executed Priority Customer volume along with that of its affiliates,¹³ not including Excluded

⁹ See supra note 6.

¹⁰ The term “Priority Customer” means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial accounts(s). The number of orders shall be counted in accordance with Interpretation and Policy .01 of Exchange Rule 100. See the Definitions Section of the Fee Schedule and Exchange Rule 100, including Interpretation and Policy .01.

¹¹ The term “FIX Interface” means the Financial Information Exchange interface for certain order types as set forth in Exchange Rule 516. See the Definitions Section of the Fee Schedule and Exchange Rule 100.

¹² The term “MEO Interface” or “MEO” means a binary order interface for certain order types as set forth in Rule 516 into the MIAAX Pearl System. See the Definitions Section of the Fee Schedule and Exchange Rule 100.

¹³ “Affiliate” means (i) an affiliate of a Member of at least 75% common ownership between the firms as reflected on each firm’s Form BD, Schedule A, or (ii) the Appointed Market Maker of an Appointed EEM (or, conversely, the Appointed EEM of an Appointed Market Maker). An “Appointed Market Maker” is a MIAAX Pearl Market Maker (who does not otherwise have a corporate affiliation based upon common ownership with an EEM) that has been appointed by an EEM and an “Appointed EEM” is an EEM (who does not otherwise have a corporate affiliation based upon common ownership with a MIAAX Pearl Market Maker) that has been appointed by a MIAAX Pearl Market Maker, pursuant to the following process. A MIAAX Pearl Market Maker appoints an EEM and an EEM appoints a MIAAX Pearl Market Maker, for the purposes of the Fee Schedule, by each completing and sending an executed Volume Aggregation Request Form by email to membership@miaaxoptions.com no later than 2 business days prior to

Contracts,¹⁴ of at least 0.30% of MIAX Pearl-listed Total Consolidated Volume (“TCV”),¹⁵ as set forth in the following table:

Type of Member Connection	Monthly Volume Credit
Member that connects via the FIX Interface	\$250
Member that connects via the MEO Interface	\$1,000

If a Member connected via both the MEO Interface and FIX Interface and qualified for the Monthly Volume Credit based upon its Priority Customer volume, the greater Monthly Volume Credit would apply to such Member. During the periods when the Monthly Volume Credit was in effect, the Monthly Volume Credit was a single, once-per-month credit towards the aggregate monthly total of non-transaction fees assessable to a Member.

The Exchange proposes to amend the Definitions section of the Fee Schedule to delete the definition and remove the Monthly Volume Credit. The Exchange established the Monthly Volume Credit when it first launched operations to encourage Members to increase their order flow by providing a credit to those that exceeded a volume threshold. The Exchange believes

the first business day of the month in which the designation is to become effective. Transmittal of a validly completed and executed form to the Exchange along with the Exchange’s acknowledgement of the effective designation to each of the Market Maker and EEM will be viewed as acceptance of the appointment. The Exchange will only recognize one designation per Member. A Member may make a designation not more than once every 12 months (from the date of its most recent designation), which designation shall remain in effect unless or until the Exchange receives written notice submitted 2 business days prior to the first business day of the month from either Member indicating that the appointment has been terminated. Designations will become operative on the first business day of the effective month and may not be terminated prior to the end of the month. Execution data and reports will be provided to both parties. See the Definitions Section of the Fee Schedule.

¹⁴ “Excluded Contracts” means any contracts routed to an away market for execution. See the Definitions Section of the Fee Schedule.

¹⁵ “TCV” means total consolidated volume calculated as the total national volume in those classes listed on MIAX Pearl for the month for which the fees apply, excluding consolidated volume executed during the period of time in which the Exchange experiences an Exchange System Disruption (solely in the option classes of the affected Matching Engine). See the Definitions Section of the Fee Schedule.

that the Exchange's existing Priority Customer rebates and fees will continue to allow the Exchange to remain highly competitive and continue to attract order flow and maintain market share even without the Monthly Volume Credit.¹⁶

Implementation and Procedural History

The proposed rule change will be immediately effective. The Exchange initially filed this proposal to remove the Monthly Volume Credit (and monthly credits associated with Trading Permits) on July 1, 2021, with the proposed fees being immediately effective.¹⁷ In that proposal, the Exchange also proposed to increase its Trading Permit fees. Between August 2021 and September 2022, the Exchange withdrew and refiled the proposed rule change, each time to meaningfully attempt to provide additional justification for the proposed fee changes, provide enhanced details regarding the Exchange's cost methodology or to supplement its competition based arguments.¹⁸ The Commission received three comment letters from one commenter on the various filings.¹⁹ On October 25, 2022, the Exchange withdrew its latest proposal and submitted a revised proposal to only remove the Monthly Volume Credit (SR-PEARL-2022-44, which was

¹⁶ See, generally, Fee Schedule, Section 1)a).

¹⁷ See Securities Exchange Act Release No. 92366 (July 9, 2021), 86 FR 37379 (SR-PEARL-2021-32).

¹⁸ See Securities Exchange Act Release Nos. 92797 (August 27, 2021), 86 FR 49399 (September 2, 2021) (SR-PEARL-2021-32) ("Suspension Order 1"); 93555 (November 10, 2021), 86 FR 64254 (November 17, 2021) (SR-PEARL-2021-54); 93895 (January 4, 2022), 87 FR 1217 (January 10, 2022) (SR-PEARL-2021-59); 94287 (February 18, 2022), 87 FR 10837 (February 25, 2022) (SR-PEARL-2022-05) ("Suspension Order 2"); 94696 (April 12, 2022), 87 FR 22987 (April 18, 2022) (SR-PEARL-2022-09); 94993 (May 26, 2022), 87 FR 33518 (June 2, 2022) (SR-PEARL-2022-23); SR-PEARL-2022-28; 95419 (August 4, 2022), 87 FR 48702 (August 10, 2022) (SR-PEARL-2022-30); 95775 (September 15, 2022), 87 FR 57544 (September 20, 2022) (SR-PEARL-2022-35).

¹⁹ See Letters from Richard J. McDonald, Susquehanna International Group, LLC ("SIG"), to Vanessa Countryman, Secretary, Commission, dated September 28, 2021 and March 15, 2022, and Letter from Brian Sopinsky, General Counsel, SIG, to Vanessa Countryman, Secretary, Commission, dated May 9, 2022.

not noticed by the Commission). On November 2, 2022, the Exchange withdrew SR-PEARL-2022-44 and now resubmits a revised proposal to only remove the Monthly Volume Credit.

2. Statutory Basis

The Exchange believes that its proposal to amend the Fee Schedule is consistent with Section 6(b) of the Act²⁰ in general, and furthers the objectives of Section 6(b)(4) of the Act²¹ 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 proposed changes to the Fee Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for order flow, which constrains its pricing determinations. The fact that the market for order flow is competitive has long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated, “[n]o one disputes that competition for order flow is ‘fierce.’ ... As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’....”²²

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention to determine prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current

²⁰ 15 U.S.C. 78f(b).

²¹ 15 U.S.C. 78f(b)(4).

²² See *NetCoalition*, 615 F.3d at 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

market model, 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.”²³

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 and services, terminate an existing membership or determine to not become a new member, and/or shift order flow, in response to transaction fee changes. For example, on February 28, 2019, the Exchange filed with the Commission a proposal to increase Taker fees in certain Tiers for options transactions in certain Penny classes for Priority Customers and decrease Maker rebates in certain Tiers for options transactions in Penny classes for Priority Customers (which fee was to be effective March 1, 2019).²⁴ The Exchange experienced a decrease in total market share for the month of March 2019, after the proposal went into effect. Accordingly, the Exchange believes that its March 1, 2019, fee change, to increase certain transaction fees and decrease certain transaction rebates, may have contributed to the decrease in MIAX Pearl’s market share and, as such, the Exchange believes competitive forces constrain the Exchange’s, and other options exchanges, ability to set transaction fees and market participants can shift order flow based on fee changes instituted by the exchanges.

The Exchange believes its proposal to remove the Monthly Volume Credit is reasonable, equitable and not unfairly discriminatory because all market participants will no longer be offered the ability to achieve the extra credits associated with the Monthly Volume Credit for

²³ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

²⁴ See Securities Exchange Act Release No. 85304 (March 13, 2019), 84 FR 10144 (March 19, 2019) (SR-PEARL-2019-07).

submitting Priority Customer volume to the Exchange. The Exchange believes it is reasonable and equitable to remove the Monthly Volume Credit from the Fee Schedule for business and competitive reasons. The Exchange established the Monthly Volume Credit when it first launched operations to encourage Members to increase their order flow by providing a credit to those that exceeded a volume threshold. The Exchange believes that the Exchange's existing Priority Customer rebates and fees will continue to allow the Exchange to remain highly competitive and continue to attract order flow and maintain market share even without the Monthly Volume Credit.²⁵

The Exchange further believes its proposal to remove the Monthly Volume Credit is reasonable because the Exchange originally adopted the Monthly Volume Credit to attract order flow to increase the Exchange's market share. The Exchange believes that the Monthly Volume Credit has served its purpose of incentivizing market participants to trade on the Exchange as the Exchange's market share continues to grow and increase since the credit was established.²⁶ Therefore, the Exchange believes it is reasonable to remove the Monthly Volume Credit from the Fee Schedule.

Lastly, the Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act in that it is not designed to permit unfair discrimination between customers, issuers, brokers and dealers because the Monthly Volume Credit will no longer be available to any Member and all Members would now be subject to the same level of non-transaction fees regardless of the amount of Priority Customer volume they execute on the Exchange.

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

²⁵ See Fee Schedule, Section 1)a).

²⁶ The Exchange experienced a monthly average trading volume in equity options of 4.35% for the month of October 2022. See Market at a Glance, supra note 5 (last visited November 2, 2022).

In accordance with Section 6(b)(8) of the Act,²⁷ the Exchange believes that the proposed rule change would not impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intra-Market Competition

The Exchange believes the removal of the Monthly Volume Credit will not place certain market participants at a relative disadvantage to other market participants because, in order to attract order flow, the Exchange established this credit to lower the initial fixed cost for Members. The Exchange now believes that it is appropriate to remove this credit in light of the current operating conditions, including the Exchange's overall membership and the current type and amount of volume executed on the Exchange. The Exchange believes that the Exchange's current rebates and fees will still allow the Exchange to remain highly competitive such that the Exchange should continue to attract order flow and maintain market share.²⁸ Lastly, the proposed fee change will not impact intra-market competition because it will apply to all Members equally.

Inter-Market Competition

The Exchange operates in a highly competitive market in which market participants can readily favor one of the 15 competing options venues if they deem fee levels at a particular venue to be excessive. Based on publicly-available information, and excluding index-based options, no single exchange has more than approximately 16% market share. Therefore, no exchange possesses significant pricing power regarding memberships or in the execution of multiply-listed equity and exchange-traded fund ("ETF") options order flow. Over the course of

²⁷ 15 U.S.C. 78f(8).

²⁸ See, generally, Fee Schedule, Section 1)a).

2021 and 2022, the Exchange's market share has fluctuated between approximately 3-6% of the U.S. equity options industry.²⁹ The Exchange is not aware of any evidence that a market share of approximately 3-6% provides the Exchange with anti-competitive pricing power when it comes to competition for memberships. The Exchange believes that the ever-shifting market share among exchanges from month to month demonstrates that market participants can discontinue memberships in response to fee changes. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract and retain memberships on the Exchange.

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

The Exchange responded to comment letters in a prior proposal.³⁰

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,³¹ and Rule 19b-4(f)(2)³² thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

²⁹ See supra note 5.

³⁰ See supra note 18.

³¹ 15 U.S.C. 78s(b)(3)(A)(ii).

³² 17 CFR 240.19b-4(f)(2).

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

Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>);

or

- Send an e-mail [to rule-comments@sec.gov](mailto:to-rule-comments@sec.gov). Please include File Number SR-PEARL-2022-46 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-2022-46. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the

Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-PEARL-2022-46 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.³³

Vanessa Countryman
Secretary

³³ 17 CFR 200.30-3(a)(12).

Exhibit 5

New text is underlined;
 Deleted text is in [brackets]

MIAX Pearl Options Exchange Fee Schedule

Definitions

* * * * *

[“Monthly Volume Credit” means a credit assessable to a Member whose executed Priority Customer volume along with that of its Affiliates, not including Excluded Contracts, is at least 0.30% of MIAX Pearl-listed TCV, as set forth below:

Type of Member Connection	Monthly Volume Credit
Member that connects via the FIX Interface	\$250
Member that connects via the MEO Interface	\$1,000

* If a Member connects via both the MEO Interface and FIX Interface and qualifies for the Monthly Volume Credit based upon its Priority Customer Volume, the greater Monthly Volume Credit shall apply to such Member.

The Monthly Volume Credit is a single, once-per-month credit towards the aggregate monthly total of non-transaction fees assessable to a Member.]

* * * * *