

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.²¹

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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or send an email to rule-comments@sec.gov. Please include File Number SR-Phlx-2022-46 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-Phlx-2022-46. This file number should be included on the subject line if email 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-Phlx-2022-46 and should be submitted on or before December 13, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

Sherry R. Haywood,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-96332; File No. SR-PEARL-2022-50]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 2617 Order Execution and Routing

November 16, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 7, 2022, MIAX PEARL, LLC ("MIAX Pearl" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the 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 proposed rule change to amend the Route to Primary Auction ("PAC") routing option under Exchange Rule 2617(b)(5)(B).

The text of the proposed rule change is available on the Exchange's website at <http://www.miaxoptions.com/rule-filings/pearl> at MIAX Pearl's principal

office, and at the Commission's Public Reference Room.

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

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

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

1. Purpose

The purpose of the proposed rule change is to amend the PAC routing option under Exchange Rule 2617(b)(5)(B) that is available to orders in equity securities traded on the Exchange's equity trading platform (referred to herein as "MIAX Pearl Equities").³ Specifically, the Exchange proposes to amend Exchange Rule 2617(b)(5)(B)(1)(i) to harmonize the timeline by which displayed Limit Orders⁴ and Market Orders⁵ with a time-in-force of Regular Hours Only ("RHO")⁶ are routed to participate in the primary listing market's opening process with the timeline by which the Exchange currently routes displayed Limit Orders to participate in the primary listing market's closing process.

The Exchange offers its Equity Members⁷ optional routing functionality that allows them to use the Exchange to access liquidity on other trading centers. The functionality

³ The Exchange notes that provisions of Exchange Rule 2617(b)(5) that are not subject to this proposed rule change were amended in a separate filing, but those amendments have not yet been implemented. See Securities Exchange Act Release No. 95298 (July 15, 2022), 87 FR 43579 (July 21, 2022) (SR-PEARL-2022-29).

⁴ See Exchange Rule 2614(a)(1).

⁵ See Exchange Rule 2614(a)(2).

⁶ Exchange Rule 2614(b)(2) defines "Regular Hours Only" or "RHO" as "[a]n order that is designated for execution only during Regular Trading Hours, which includes the Opening Process for equity securities. An order with a time-in-force of RHO entered into the System before the opening of business on the Exchange as determined pursuant to Exchange Rule 2600 will be accepted but not eligible for execution until the start of Regular Trading Hours."

⁷ The term "Equity Member" is a Member authorized by the Exchange to transact business on MIAX Pearl Equities. See Exchange Rule 1901.

²² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

²¹ 15 U.S.C. 78s(b)(3)(A)(ii).

includes routing algorithms that determine the destination or pattern of routing. Exchange Rule 2617(b)(5) sets forth that there is a particular pattern of routing to other trading centers, known as the “System routing table”, as well as sets forth the Exchange’s available routing options. All routing is designed to be conducted in a manner consistent with Regulation NMS.

The Exchange recently launched the PAC routing option,⁸ which enables an Equity Member to designate that their order be routed to participate in the primary listing market’s opening, re-opening, or closing process. In sum, Exchange Rule 2617(b)(5)(B) describes PAC as a routing option for Market Orders and displayed Limit Orders designated as RHO that the entering firm wishes to designate for participation in the opening, re-opening (following a regulatory halt, suspension, or pause), or closing process of a primary listing market (Cboe BZX Exchange, Inc. (“BZX”), the New York Stock Exchange LLC (“NYSE”), The Nasdaq Stock Market LLC (“Nasdaq”), NYSE American LLC (“NYSE American”), or NYSE Arca, Inc. (“NYSE Arca”)) if received before the opening, re-opening, or closing process of such market.

According to Exchange Rule 2617(b)(5)(B)(1)(i), the Exchange routes upon receipt displayed Limit Orders and Market Orders designated as RHO coupled with the PAC routing option to participate in the primary listing market’s opening process that are received before the security has opened on the primary listing market. Meanwhile, the Exchange handles displayed Limit Orders designated as RHO coupled with the PAC routing option that are to be routed to the primary listing market’s closing process differently. In sum, the Exchange accepts displayed Limit Orders that include a time-in-force of RHO and designated to be routed to the primary listing market’s closing process throughout the trading day⁹ and, pursuant to Exchange Rule 2617(b)(5)(B)(1)(ii)(a), routes those

⁸ See Securities Exchange Act Release No. 94301 (February 23, 2022), 87 FR 11739 (March 2, 2022) (SR-PEARL-2022-06). See also MIAX Pearl Equities—Expansion of Functionality Through New Route to Primary Auction (PAC) Strategy—Rollout Postponed until June 27, 2022, dated June 8, 2022, available at <https://www.miaxoptions.com/alerts/2022/06/08/miax-pearl-equities-expansion-functionality-through-new-route-primary-auction-pac> (last visited June 28, 2022).

⁹ See Exchange Rule 2600(a) (providing that “[o]rders may be entered into the System from 7:30 a.m. until 4:00 p.m. Eastern Time (or such earlier time as may be designated by the Exchange on a day when MIAX Pearl Equities closes early)”).

orders to participate in the primary listing market’s closing process prior to the primary listing market’s order entry cut-off time. The Exchange currently routes such orders at 3:49:59 p.m. Eastern Time.¹⁰ Such orders received after 3:49:59 p.m. Eastern Time, but before the primary listing market performs its closing process are, however, routed upon receipt after first checking the System for available shares pursuant to Exchange Rule 2617(b)(5)(B)(1)(ii)(a).¹¹

The Exchange proposes to route displayed Limit Orders and Market Orders designated as RHO coupled with the PAC routing option to the primary listing market’s opening process in a similar fashion as Limit Orders that are to be routed to the primary listing market’s closing process. As it does for displayed Limit Orders routed to the primary listing market’s closing process, the Exchange proposes to route displayed Limit Orders and Market Orders designated as RHO and coupled with the PAC routing option to participate in the primary listing market’s opening process prior to the primary listing market’s order entry cut-off time. Displayed Limit Orders and Market Orders designated as RHO that are to be routed to participate in the primary listing market’s opening process may continue to be entered as early as 7:30 a.m. Eastern Time and, pursuant to this change, the Exchange would route those orders at a set time prior to the primary listing market’s order entry cut-off time. The Exchange initially intends to route orders

¹⁰ See MIAX Pearl Equities Exchange Regulatory Circular 2022-09, September 28, 2022, available at https://www.miaxoptions.com/sites/default/files/circular-files/MIAX_Pearl_Equities_RC_2022-09.pdf. The Exchange publicly announces any updates to the time at which it would route Limit Orders to participate in the primary listing market’s closing process via a regulatory circular or alert. See Securities Exchange Act Release No. 94301 (February 23, 2022), 87 FR 11739, 11742, n. 20 (March 2, 2022) (SR-PEARL-2022-06).

¹¹ Today Market Orders are generally ineligible to be routed to participate in primary listing market’s closing process. At a future date, the Exchange will begin to route Market Orders designated as RHO to participate in the primary listing market’s closing process where that order is received after 3:50:00 p.m. Eastern Time and the primary listing market declared a regulatory halt. See *supra* note 3. Amended Exchange Rule 2617(b)(5)(B)(1)(ii)(b) provides that the Exchange will only route a Market Order designated as RHO to participate in the primary listing market’s closing process when that Market Order is: (i) entered at or after 3:50 p.m. Eastern Time, but before market close, (ii) the primary listing market has declared a regulatory halt; and (iii) the primary listing market is to conduct its closing process according to their applicable rules. All other Market Orders designated as RHO received at or after the time the Exchange begins to route existing orders to participate in the primary listing market’s closing process, but before market close, will be cancelled.

pursuant to the PAC routing option to participate in the primary listing market’s opening process at 8:00:00 a.m. Eastern Time.¹² Any order received at or between 7:30:00 a.m. and 8:00:00 a.m. Eastern Time would be routed to participate in the primary listing market’s opening process at 8:00:00 a.m. Eastern Time. Orders routed at 8:00:00 a.m. Eastern Time are prioritized among each other based on the time of receipt. Any orders entered after 8:00:00 a.m. Eastern Time, but before the primary listing market conducts its opening auction, would be routed upon receipt, as is the case today.

Accordingly, the Exchange proposes to amend Exchange Rule 2617(b)(5)(B)(1)(i) to provide that “[a] displayed Limit Order or Market Order designated as RHO received before the security has opened on the primary listing market will be routed to participate in the primary listing market’s opening process prior to the primary listing market’s order entry cut-off time.” Amended Exchange Rule 2617(b)(5)(B)(1)(i) would further provide that “[i]f a displayed Limit Order or Market Order designated as RHO is received at or after the time the Exchange begins to route existing orders to participate in the primary listing exchange’s opening process, but before market open, the Exchange will route such orders to participate in the primary listing market’s opening process upon receipt.” These provisions are based on Exchange Rule 2617(b)(5)(B)(1)(ii)(a), which describes the timeline by which displayed Limit Orders designated as RHO are routed to participate in the primary listing market’s closing process pursuant to the PAC routing option.¹³

Like Exchange Rule 2617(b)(5)(B)(1)(ii)(a), amended Exchange Rule 2617(b)(5)(B)(1)(i) would not provide a deadline for order entry because the Exchange will continue to route displayed Limit Orders and Market Orders designated as RHO to participate in the primary listing market’s opening process after their order entry cut-off time. This is intended to provide Equity Members with increased opportunities to participate in the primary listing

¹² The Exchange will publicly announce this initial time at which it would route orders to participate in the primary listing market’s opening process and any updates to that time via a regulatory circular or alert.

¹³ Unlike when routing orders pursuant to the PAC routing option to participate in the primary listing market’s closing process, the Exchange does not first check the System for available shares prior to routing orders pursuant to the PAC routing option to participate in the primary listing market’s opening process because the Exchange does not offer a pre-market trading session at this time.

market's opening process while also accounting for whether the order entry cut-off time is changed/extended or should the primary listing market continue to accept orders after their established order entry cut-off time in accordance with their rules.¹⁴ If the primary listing market rejects or cancels the order for any reason, the Exchange will pass that rejection or cancellation along to the Equity Member that entered the order. Like for the closing process, Equity Members that seek greater certainty that their orders coupled with the PAC routing option would participate in the opening process at the primary listing market may enter their orders prior to the primary listing market's order entry cut-off time.

Pursuant to Exchange Rule 2617(b)(5)(B)(1)(i)(a), any shares of a Limit Order that remain unexecuted after attempting to execute in the primary listing market's opening process will continue to be posted to the MAX Pearl Equities Book, executed, or routed pursuant to the Price Improvement routing option.¹⁵ Because displayed Limit Orders must be designated as RHO upon entry to be routed pursuant to the PAC routing option, an Equity Member that wants any returned unexecuted quantity of such order to be immediately returned to them would continue to need to submit an instruction to cancel any unexecuted shares upon their return to the Exchange. Any shares of a Market Order that remain unexecuted after attempting to execute in the primary listing market's opening process will continue to be cancelled pursuant to Exchange Rule 2617(b)(5)(B)(1)(i)(b).

¹⁴ See, e.g., NYSE Rule 7.35A(a) (providing that "[i]t is the responsibility of each DMM to ensure that registered securities open as close to the beginning of Core Trading Hours as possible") and NYSE Rule 7.35A(a)(4)(A) (allowing for a delayed opening). See, e.g., BZX Rule 11.23(b)(1)(A) (providing for the entry of Late Limit On Open Orders between 9:28 a.m. and 9:30 a.m.). This behavior is also similar to Nasdaq's LIST routing option that will continue to route orders to participate in the primary listing market's opening process after its order entry cut-off time. See Nasdaq Rule 4758(a)(1)(A)(x) (stating that "[a] LIST order received before the security has opened on its primary listing market will be routed to the primary listing market for participation in that market's opening process. . . . If a LIST order has been designated to participate in the opening only and is entered after the security has opened, the order will nevertheless be routed to the primary listing market; based on its designation as opening only, such an order would be expected to be rejected by the destination market, and would also be cancelled by Nasdaq if returned by the destination market.").

¹⁵ See Exchange Rule 2617(b)(5)(C) for a description of the Price Improvement routing option.

Implementation

The Exchange will issue a trading alert publicly announcing the implementation date of this proposed rule change.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,¹⁶ in general, and furthers the objectives of Section 6(b)(5),¹⁷ in particular, because it is designed to promote just and equitable principles of trade, 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. The proposed rule change would remove impediments to a free and open market and promote just and equitable principles of trade because it would provide for consistent order handling by harmonizing the timeline by which it would route orders coupled with the PAC routing option to the primary listing market's opening process with the timeline it currently routes such displayed Limit Orders to participate in the primary listing market's closing process.

This proposed change is intended to provide Equity Members with consistent treatment of their orders when being routed to participate in the primary listing market's opening or closing process. Doing so would provide Equity Members with consistent order handling in both situations and remove any potential confusion with regard to how their orders would be handled when being routed pursuant to the PAC routing option. Retaining and queuing orders received prior to the primary listing market's order entry cut off time simplifies the Exchange's order handling processes because, for example, the Exchange is able to retain those orders for a period of time and more easily process potential order modification or cancellation requests. The Exchange also notes that use of the PAC routing option remains completely voluntary and no Equity Member is required to route orders through the Exchange and may choose other methods to access liquidity on other trading centers.

The proposal would not impede the national market system because it is not designed to disrupt the ability of the primary listing market to conduct their opening processes. The proposed rule change is similar to existing routing options already provided by other

equity exchanges¹⁸ that route orders to participate in the primary listing market's opening process at varying times. The Exchange understands other exchange's similar routing options have not disrupted the primary listing market's ability to conduct their opening process. The primary listing markets are free to reject or cancel such orders should they deem them to be inconsistent with their applicable rules.

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. In fact, the Exchange believes this particular proposed change to the PAC routing option would have no effect on competition because it does not believe the proposed changes would impact whether Equity Members chose to use the PAC routing option. The proposal simply seeks to provide for consistent order handling by harmonizing the timeline by which it would route orders coupled with the PAC routing option to the primary listing market's opening process with the timeline it currently routes such displayed Limit Orders to participate in the primary listing market's closing process. Also, any orders entered after the time the Exchange begins to route orders to the primary listing market's opening process, but before market open, would continue to be routed upon receipt. Therefore, the Exchange believes this proposed rule change would not burden competition in any manner.

Use of the Exchange's PAC routing option is voluntary and Equity Members have numerous alternative mechanisms for order routing, the changes will not impair the ability of Equity Members to use other means to access the primary listing market's opening process. The PAC routing option, in general, improves inter-market competition because it allows the Exchange to provide another means by which market participants may route orders to participate in the primary listing market's opening, re-opening, or closing processes that the Exchange believes is similar to that currently provided by other exchanges.¹⁹

¹⁸ See BZX Rule 11.13(b)(3)(N), Choe EDGX Exchange, Inc. ("EDGX") Rule 11.11(g)(8) and Nasdaq Rule 4758(a)(1)(A)(x).

¹⁹ See BZX Rule 11.13(b)(3)(N) (describing the ROOC routing option), EDGX Rule 11.11(g)(8) (describing the ROOC routing option), and Nasdaq Rule 4758(a)(1)(A)(x) (describing the LIST routing option). See also *supra* note 14.

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(5).

The Exchange also believes that the proposal will not impose any burden on intra-market competition because it would be available to all Equity Members. Any Equity Member that seeks to have their order routed to participate in the primary listing market's opening process is free to select the PAC routing option or seek to access those markets through other means.

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

No written comments were either solicited or received.

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 after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act²⁰ and Rule 19b-4(f)(6)²¹ thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)²² normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),²³ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Exchange states that waiver of the operative delay would be consistent with the protection of investors and the public interest because it would enable the Exchange to implement the proposed rule change as

soon as possible. The Exchange states that this would allow the Exchange to retain and queue orders received prior to the primary listing market's order entry cut off time during the operative delay period, which would simplify the Exchange's order handling processes in the near term by, for example, enabling the Exchange to retain those orders for a period of time and more easily process potential order modification or cancellation requests. The Exchange also states that waiver of the operative delay would provide Equity Members with immediate consistent treatment of the orders that are to be routed to participate in the primary listing market's opening and closing process, thereby removing the potential for investor confusion during the operative delay period. Further, the proposed functionality is similar to existing routing options already provided by other equity exchanges. For these reasons, and because the proposed rule change does not raise any novel regulatory issues, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.²⁴

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

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-PEARL-2022-50 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-2022-50. This file number should be included on the subject line if email 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-2022-50 and should be submitted on or before December 13, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁵

Sherry R. Haywood,

Assistant Secretary.

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²⁰ 15 U.S.C. 78s(b)(3)(A).

²¹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) 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.

²² 17 CFR 240.19b-4(f)(6).

²³ 17 CFR 240.19b-4(f)(6)(iii).

²⁴ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²⁵ 17 CFR 200.30-3(a)(12).