SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-96472; File No. SR-PEARL-2022-53)

December 9, 2022

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

Pursuant to 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 30, 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 fee schedule (the "Fee Schedule") applicable to MIAX Pearl Equities, an equities trading facility of the Exchange.

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 purpose of the proposed rule change is to amend the Exchange's Fee Schedule to (i) adopt a reduced fee for executions of Midpoint Peg Orders[3] that remove liquidity and execute at the midpoint of the Protected NBBO ("PBBO");[4] (ii) adopt a new Liquidity Code and associated fee to the Liquidity Indicator Codes and Associated Fees table for a Midpoint Peg Order; and (iii) update the Standard Rates table to include the new Liquidity Indicator Code in the Removing Liquidity column.

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues, to which market participants may direct their order flow. Based on publicly available information, no single registered equities exchange currently has

3 A Midpoint Peg Order is a non-displayed Limit Order that is assigned a working price pegged to the midpoint of the PBBO. A Midpoint Peg Order receives a new timestamp each time its working price changes in response to changes to the midpoint of the PBBO. See Exchange Rule 2614(a)(3).

4 With respect to the trading of equity securities, the term "Protected NBB" or "PBB" shall mean the national best bid that is a Protected Quotation, the term "Protected NBO" or "PBO" shall mean the national best offer that is a Protected Quotation, and the term "Protected NBBO" or "PBBO" shall mean the national best bid and offer that is a Protected Quotation. See Exchange Rule 1901.

more than approximately 17% of the total market share of executed volume of equities trading, and the Exchange currently represents approximately 1.06% of the overall market share.[5]

Midpoint Peg Orders

The Exchange currently charges a standard fee of $0.0029 per share for executions of orders in securities priced at or above $1.00 per share that remove liquidity from the Exchange in all Tapes (such orders, "Removed Liquidity"). The Exchange now proposes to adopt a reduced fee of $0.00265 per share for executions of Midpoint Peg Orders in securities priced at or above $1.00 that execute at the midpoint of the PBBO and remove liquidity from the Exchange in all Tapes. As proposed, executions of Midpoint Peg Orders in securities priced below $1.00 per share that execute at the midpoint of the PBBO and remove liquidity from the Exchange will be charged a fee of 0.20% of the total dollar of the transaction, which is the same fee that is currently charged for all such executions.

The purpose of reducing the fee for executions of Midpoint Peg Orders is to incentivize Equity Members[6] (or "Members") to submit additional liquidity-removing orders designed to execute at the midpoint to the Exchange, as the cost of such executions would be lower than it is today. In turn, the Exchange believes the submission of additional Midpoint Peg Orders would encourage firms that post liquidity at the midpoint to submit additional liquidity-providing orders designed to execute at the midpoint to the Exchange, as such orders would have a greater chance of being executed as a result of additional contra-side liquidity-removing Midpoint Peg Orders to interact with. Thus, the Exchange's proposal to reduce the fee for executions of Midpoint Peg

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5 See MIAX's "The market at a glance/Equities/MTD AVERAGE", available at https://www.miaxoptions.com/ (Data as of 11/1/2022 – 11/18/2022).

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

Orders is designed to deepen liquidity and increase execution opportunities at the midpoint on the Exchange, thereby improving the Exchange's market quality to the benefit of all Members and enhancing its attractiveness as a trading venue.

The Exchange proposes to update the Liquidity Indicator Code and Associated Fees Table as follows:

- Add new liquidity indicator code Rp, Removes Liquidity and Executes at the Midpoint, Non-Displayed Midpoint Peg Order (All Tapes). The Liquidity Indicator Code and Associated Fees table would specify that orders that yield liquidity indicator code Rp would be assessed a fee of $0.00265 per share in securities priced at or above $1.00 and 0.20% of the transaction's dollar value in securities priced below $1.00.

The Exchange also proposes to add the above liquidity indicator code to the Standard Rates table. Specifically, liquidity indicator code Rp would be added to the "Remove Liquidity" column.

Implementation

The Exchange proposes to implement the changes to the Fee Schedule pursuant to this proposal on December 1, 2022.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[7] in general, and furthers the objectives of Section 6(b)(4) of the Act[8] in particular, in that it is an equitable allocation of reasonable fees and other charges among its

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[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

Equity Members and issuers and other persons using its facilities. The Exchange also believes that the proposed rule change is consistent with the objectives of Section 6(b)(5)[9] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, and 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, and, particularly, is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange operates in a highly fragmented and competitive market in which market participants can readily direct their order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of sixteen registered equities exchanges, and there are a number of alternative trading systems and other off-exchange venues, to which market participants may direct their order flow. Based on publicly available information, no single registered equities exchange currently has more than approximately 17% of the total market share of executed volume of equities trading.[10] Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow, and the Exchange currently represents less than 1.06% of the overall market share. The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission

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9 15 U.S.C 78f(b)(5).

10 See supra note 5.

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."[11]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to new or different pricing structures being introduced into the market. Accordingly, competitive forces constrain the Exchange's transaction fees and rebates, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. The Exchange believes the proposal reflects a reasonable and competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange, which the Exchange believes would enhance liquidity and market quality to the benefit of all Members and market participants.

The Exchange believes that its proposal to charge a reduced fee for Midpoint Peg Orders that remove liquidity and execute at the midpoint is reasonable, equitable, and not unfairly discriminatory. Specifically, the Exchange believes such proposal is reasonable, as it is reasonably designed to incentivize Members to submit additional Midpoint Peg Orders to the Exchange, which, in turn, the Exchange believes would encourage firms that post midpoint liquidity to submit additional liquidity-adding orders designed to execute at the midpoint to the Exchange in order to interact with such Midpoint Peg Orders, as described above. Thus, the Exchange believes the proposal reflects a reasonable attempt to deepen liquidity and increase

[11] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37499 (June 29, 2005).

execution opportunities at the midpoint on the Exchange, thereby improving the Exchange's market quality to the benefit of all Members and enhancing its attractiveness as a trading venue, particularly as the Exchange believes the proposed reduction in the fee for executions of Midpoint Peg Orders (i.e., $0.00025 per share lower than the standard fee for Removed Liquidity) is not excessive and is reasonably related to the market quality benefits it is intended to achieve. The Exchange also believes that the proposed fee for executions of Midpoint Peg Orders is equitable and not unfairly discriminatory, as such fee would be charged uniformly to all executions of such orders for all Members.

New Liquidity Indicator Code

The Exchange believes its proposal to add new liquidity indicator code "Rp" to the Liquidity Indicator Codes and Associated Fees table and to add liquidity indicator code "Rp" to the "Removing Liquidity" column of the Standard Rates table, is reasonable and equitable because it will apply equally to all Members of the Exchange that submit Midpoint Peg Orders that remove liquidity at the midpoint. This liquidity indicator code would be returned on the real-time trade reports sent to the Member that submitted the order. The use of liquidity indicator codes is not unique to the Exchange as liquidity indicator codes are currently utilized and described in the fee schedules of other equity exchanges.[12] Further, the Exchange's proposed fee of $0.00265 is competitive with other exchanges that provide a similar pricing incentive.[13]

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12 See the fee schedule of MEMX LLC ("MEMX") available on their public website at https://info.memxtrading.com/fee-schedule/; and the fee schedule of the Investors Exchange LLC ("IEX") available on their public website at https://exchange.iex.io/resources/trading/fee-schedule/.

13 See fee code "Rm" of the MEMX fee schedule that assesses a $0.0027 fee for removed volume from the MEMX Book, Midpoint Peg, available on their public website at https://info.memxtrading.com/fee-schedule/.

For the reasons discussed above, the Exchange submits that the proposal satisfies the requirements of Sections 6(b)(4) and 6(b)(5) of the Act in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities and is not designed to unfairly discriminate between customers, issuers, brokers, or dealers. As described more fully below in the Exchange's statement regarding the burden on competition, the Exchange believes that its transaction pricing is subject to significant competitive forces, and that the proposed fees and rebates described herein are appropriate to address such forces.

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

The Exchange does not believe that the proposed change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed change would encourage Members to maintain or increase their order flow to the Exchange, thereby contributing to a deeper and more liquid market to the benefit of all market participants and enhancing the attractiveness of the Exchange as a trading venue. As a result, the Exchange believes the proposal would enhance its competitiveness as a market that attracts actionable orders, thereby making it a more desirable destination venue for its customers. For these reasons, the Exchange believes that the proposal furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."[14]

Intramarket Competition

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

The Exchange believes that the proposal would incentivize Members to submit additional order flow, including liquidity-adding and liquidity-removing orders designed to execute at the midpoint, to the Exchange, thereby enhancing liquidity and market quality on the Exchange to the benefit of all Members, as well as enhancing the attractiveness of the Exchange as a trading venue, which the Exchange believes, in turn, would continue to encourage market participants to direct additional order flow to the Exchange. Greater liquidity benefits all Members by providing more trading opportunities and encourages Members to send additional orders to the Exchange, thereby contributing to robust levels of liquidity, which benefits all market participants. The proposed reduced fee for executions of Midpoint Peg Orders that remove liquidity at the midpoint from the Exchange will apply to all such executions for all Members on the Exchange. As such, the Exchange believes the proposed changes would not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intermarket Competition

The Exchange believes its proposal will benefit competition, and the Exchange notes that it operates in a highly competitive market. Members have numerous alternative venues they may participate on and direct their order flow to, including fifteen other equities exchanges and numerous alternative trading systems and other off-exchange venues. As noted above, no single registered equities exchange currently has more than 17% of the total market share of executed volume of equities trading.[15] Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. Moreover, the Exchange believes that the ever-shifting market share among the exchanges from

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15 See supra note 5.

month to month demonstrates that market participants can shift order flow in response to new or different pricing structures being introduced to the market. Accordingly, competitive forces constrain the Exchange's transaction fees and rebates, including with respect to executions of Midpoint Peg Orders, and market participants can readily choose to send their orders to other exchanges and off-exchange venues if they deem fee levels at those other venues to be more favorable.

As described above, the proposed changes represent a competitive proposal through which the Exchange is seeking to encourage additional order flow to the Exchange through a reduced fee for executions of Midpoint Peg Orders. The proposed fee for executions of Midpoint Peg Orders that remove liquidity at the midpoint from the Exchange is competitive with fees charged by at least one other exchange that offers a similar pricing incentive.[16] Accordingly, the Exchange believes its proposal would not burden, but rather promote, intermarket competition by enabling it to better compete with other exchanges that offer similar pricing incentives to market participants.

Additionally, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."[17] The fact that this market is competitive has also long been recognized by the courts. In

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16 See supra note 13.

17 See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

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 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 possess a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers' . . .".[18] Accordingly, the Exchange does not believe its proposed pricing changes impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[19] and Rule 19b-4(f)(2)[20] 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

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18 NetCoalition v. SEC, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSE-2006-21)).

19 15 U.S.C. 78s(b)(3)(A)(ii).

20 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. Please include File Number SR-PEARL-2022-53 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-2022-53. 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. Persons submitting comments are cautioned that we do not redact or 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-2022-53 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.[21]

Sherry R. Haywood,
Assistant Secretary.

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[21] 17 CFR 200.30-3(a)(12).