

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of \* 33

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

File No. \* SR 2023 - \* 15

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 type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input checked="" 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 \*).

Amend Exchange Rule 2617(b)(5) related to Retail Orders routed pursuant to the PAC routing option when trading equity securities on the Exchange's equity trading platform

### 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 \* Chris Last Name \* Solgan

Title \* Vice President, Senior Counsel

E-mail \* csolgan@miami-holdings.com

Telephone \* (609) 423-9414 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 03/28/2023

(Title \*)

By Chris Solgan

Vice President, Senior 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.

Date: 2023.03.28  
08:30:15 -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 EFFS website.

**Form 19b-4 Information \***

Add Remove View

SR-PEARL-2023-15 19b-4 FINAL.doc

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-2023-15- 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-2023-15 - Exhibit 5 FINAL

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 the “Exchange”), pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> is filing with the Securities and Exchange Commission (the “Commission”) a proposed rule change to amend Exchange Rules 2617(b)(5) and 2626(f) related to Retail Orders<sup>3</sup> routed pursuant to the Route to Primary (“PAC”) routing option when trading equity securities on the Exchange’s equity trading platform (referred to herein as “MIAX Pearl Equities”).

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1, and the text of the proposed rule change is attached hereto as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

## 2. **Procedures of the Self-Regulatory Organization**

The proposed rule change was approved by the Chief Executive Officer of the Exchange pursuant to authority delegated by the Exchange Board of Directors on February 2, 2023.

Exchange staff will advise the Board of Directors of any action taken pursuant to delegated authority. No other action is necessary by the Exchange for the filing of the proposed rule change.

---

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

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

<sup>3</sup> A “Retail Order” is an agency or riskless principal order that meets the criteria of FINRA Rule 5320.03 that originates from a natural person and is submitted to the Exchange by a Retail Member Organization, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. See Exchange Rule 2626(a)(2).

Questions and comments on the proposed rule change may be directed to Chris Solgan, Vice President and Senior Counsel, at (609) 423-9414.

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

a. Purpose

The purpose of the proposed rule change is to amend Exchange Rule 2617(b)(5) related to Retail Orders routed pursuant to the PAC routing option when trading equity securities on MIAX Pearl Equities. Exchange Rule 2626 defines Retail Orders and sets forth the requirements<sup>4</sup> that Equity Members<sup>5</sup> must complete prior to sending Retail Orders to the Exchange. Equity Members that seek to become a Retail Member Organization (“RMO”)<sup>6</sup> must complete an attestation in a form required by the Exchange that substantially all orders submitted as Retail Orders will qualify as such under Exchange Rule 2626. Such Equity Members must then be approved by the Exchange as a RMO and then may designate a Retail Order to be identified as Retail on the Exchange’s proprietary data feeds on an order-by-order or port-by-port basis pursuant to Exchange Rule 2626(f). As proposed, those same Equity Members that are approved as RMOs would then be able to also identify Retail Orders as Retail when routed to the primary listing market’s opening, re-opening, or closing process pursuant to the

---

<sup>4</sup> Members must submit a signed written attestation, in a form prescribed by the Exchange, that they have implemented policies and procedures that are reasonably designed to ensure that substantially all orders designated by the Member as a “Retail Order” comply with the above requirements. See Exchange Rule 2626(b).

<sup>5</sup> The term “Equity Member” is a Member authorized by the Exchange to transact business on MIAX Pearl Equities. See Exchange Rule 1901.

<sup>6</sup> A “Retail Member Organization” or “RMO” is an Equity Member (or a division thereof) that has been approved by the Exchange under Exchange Rule 2626 to submit Retail Orders. See Exchange Rule 2626(a)(1).

PAC routing option,<sup>7</sup> described in more detail below.

The Exchange offers its Equity Members optional routing functionality that allows them to use the Exchange to access liquidity on other Trading Centers.<sup>8</sup> The functionality 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,<sup>9</sup> 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<sup>10</sup> and displayed Limit Orders<sup>11</sup> with a time-in-force of Regular Hours Only (“RHO”)<sup>12</sup> that the entering firm wishes to designate for

---

<sup>7</sup> See Exchange Rule 2617(b)(5).

<sup>8</sup> 17 CFR 242.600(b)(95) (defining “Trading Center” as “a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent”).

<sup>9</sup> 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).

<sup>10</sup> See Exchange Rule 2614(a)(2).

<sup>11</sup> See Exchange Rule 2614(a)(1).

<sup>12</sup> 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

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.

Exchange Rule 2617(b)(5)(B)(1)(i) describes how orders are routed to participate in the primary listing market’s opening or re-opening process pursuant to the PAC routing option and provides, in sum, that displayed Limit Orders and Market Orders with a time-in-force of 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. Exchange Rule 2617(b)(5)(B)(1)(i) further provides that if 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.

Exchange Rule 2617(b)(5)(B)(1)(ii) describes how orders are routed to participate in the primary listing market’s closing process pursuant to the PAC routing option. Exchange Rule 2617(b)(5)(B)(1)(ii)(a) covers Limit Orders and provides, in sum, that a Limit Order

---

Exchange Rule 2600 will be accepted but not eligible for execution until the start of Regular Trading Hours.” To ensure that orders coupled with the PAC routing option are eligible to participate in the primary listing market’s opening, re-opening, or closing process, the Exchange routes Market Orders and displayed Limit Orders designated as RHO upon entry with a time-in-force accepted or required by the primary listing market. See Exchange Rule 26174(b)(5)(B). As such, the Exchange converts an order’s time-in-force to a time-in-force accepted or required by the primary listing market when necessary only for purposes of routing that order to an away market.

designated as RHO will be routed to participate in the primary listing market's closing process prior to the primary listing market's order entry cut-off time. If a Limit Order designated as RHO is 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, the Exchange will check the System for available shares and then route the remaining shares to participate in the primary listing market's closing process. Exchange Rule 2617(b)(5)(B)(1)(ii)(b) covers Market Orders and provides, in sum, that a Market Order designated as RHO is not eligible to be routed to participate in the primary listing market's closing process, unless such 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.<sup>13</sup> 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.<sup>14</sup>

Going forward, the Exchange proposes that Retail Orders that a RMO has designated as Retail pursuant to Exchange Rule 2626(f) would also be identified as Retail when routed to the primary listing market's opening, re-opening, or closing process pursuant to the PAC routing option,<sup>15</sup> so that such order may receive preferred pricing available to Retail Orders

---

<sup>13</sup> The Exchange notes that this functionality was implemented on March 28, 2023. See MIAX Pearl Equities - Enhancement for Market Orders with a Primary Auction (PAC) Routing Strategy will be Activated on Tuesday, March 28, 2023, available at <https://www.miaxoptions.com/alerts/2023/03/22/miax-pearl-equities-enhancement-market-orders-primary-auction-pac-routing>. See also Securities Exchange Act Release No. 95298 (July 15, 2022), 87 FR 43579 (July 21, 2022) (SR-PEARL-2022-29).

<sup>14</sup> Id.

<sup>15</sup> The Exchange currently designates all routable orders, other than those routed pursuant to the PAC routing option, as IOC when routing such order to an away market, regardless of

offered by the primary listing market.<sup>16</sup> The Exchange notes that the proposal will primarily benefit displayed Limit Orders identified as Retail that are routed to participate in the primary listing market's closing process because, unlike before the opening or re-opening process, continuous trading is in effect prior to the closing process during which such routed Retail Orders may be executed and eligible to receive preferred pricing.<sup>17</sup>

The Exchange routes orders in equity securities via one or more routing brokers that are not affiliated with the Exchange.<sup>18</sup> Those routing broker-dealers are required to complete the required attestation to qualify as RMOs on the Exchange pursuant to Exchange Rule 2626, described above. Those routing broker dealers would likewise be required to complete any

---

the time-in-force included with the order upon entry. Exchange Rule 2617(b)(4) describes this functionality and currently provides that the System will designate Market Orders and marketable Limit Orders that are fully or partially routed to an away Trading Center as IOC. The Exchange does not propose to identify as Retail a Retail Order that is being routed as IOC and not pursuant to the PAC routing option because such orders would remove liquidity on entry or be cancelled and, therefore, not be eligible to receive preferred pricing available to liquidity adding orders by primary listing markets, which primarily employ maker/taker fee structures. See infra note 16. Orders routed pursuant to the PAC routing option include a time-in-force of RHO when entered on the Exchange and, therefore, may provide liquidity (and receive a preferred rebate) on the primary listing market prior to participating in the primary listing market's closing process if the time-in-force employed by the primary listing market allows the order to provide liquidity. The Exchange notes that it would convert an order's time-in-force to a time-in-force accepted or required by the primary listing market when necessary only for purposes of routing that order to an away market.

<sup>16</sup> See, e.g., Cboe BZX fee schedule available at [https://www.cboe.com/us/equities/membership/fee\\_schedule/bzx/](https://www.cboe.com/us/equities/membership/fee_schedule/bzx/) (providing an enhanced rebate of \$0.0032 to Retail Orders that add liquidity); and NYSE fee schedule available at [https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE\\_Price\\_List.pdf](https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf) (providing an enhanced rebate of \$0.0032 to Retail Orders that add liquidity).

<sup>17</sup> While the proposal may benefit Market Orders, the Exchange notes that it would be an edge case because of the limited scenario where the Exchange would route Market Orders to the primary listing market's closing process, namely, when the security is halted and continuous trading is not in effect. See Exchange Rule 2617(b)(5)(B)(1)(ii)(b).

<sup>18</sup> This routing process is described under Exchange Rule 2617(b)(1).



requirements by the primary listing market to enter Retail Orders on that market and to qualify for any enhanced pricing. To the extent the Exchange routes a Retail Order identified as Retail via a routing broker-dealer to a primary listing market, it will ensure that it does so in compliance with that market's rules governing its retail orders, including that the order satisfies that market's definition of "Retail Order."<sup>19</sup>

As discussed above, RMOs may designate a Retail Order to be identified as Retail on the Exchange's proprietary data feeds on an order-by-order or port-by-port basis pursuant to Exchange Rule 2626(f). Those same Retail Orders that are to be identified as Retail pursuant to Exchange Rule 2626(f) would also be identified as Retail when routed pursuant to the PAC routing option. The identification of a Retail Order as Retail on the Exchange's proprietary data feed and when being routed pursuant to the PAC routing option would implicate orders entered during continuous trading that are to be routed to participate in the primary listing market's closing process pursuant to the PAC routing option. Such Retail Orders that are to be identified as Retail when routed pursuant to the PAC routing option entered before market open that are to be routed to participate in the primary listing market's opening process or entered when a security is halted that are to be routed to participate in the primary listing market's re-opening process are entered during times when continuous trading is not in effect on the Exchange<sup>20</sup> and would, therefore, only be identified as Retail when being routed pursuant to the PAC routing option. The Exchange will not identify a Retail Order as Retail when routed pursuant to the PAC routing option unless instructed by the RMO to do so

---

<sup>19</sup> Any portion of a routed Retail Order that is not executed on the primary listing market that is returned the Exchange will continue to be treated as a Retail Order.

<sup>20</sup> The Exchange does not disseminate quote and trade data on its proprietary data feeds when it is not engaged in continuous trading.

pursuant to Exchange Rule 2626, either on an order-by-order or port-by-port basis. This behavior would be codified under new subparagraph (iii) under Exchange Rule 2617(b)(5)(B), which would state that, a RMO (as defined in Rule 2626(a)(1)) may designate a Retail Order (as defined in Rule 2626(a)(2)) to be identified as Retail on an order-by-order basis or instruct the Exchange to identify all of its Retail Orders as Retail on a port-by-port basis. Proposed Exchange Rule 2617(b)(5)(B)(iii) would also provide that if so designated, a Retail Order will be identified as Retail when routed pursuant to Exchange Rule 2617(b)(5)(B)(1)(i) and (ii), as well as on the Exchange's proprietary data feeds pursuant to Rule 2626(f). Proposed Exchange Rule 2617(b)(5)(B)(iii) would further provide that a RMO that instructs the Exchange to identify all its Retail Orders as Retail on a particular port will be able to override such setting and designate any individual Retail Order from that port to not be identified as Retail when routed to the primary listing market pursuant to Exchange Rule 2617(b)(5)(B)(1)(i) and (ii).<sup>21</sup> As stated above, RMOs may designate their orders as Retail in accordance with Exchange Rule 2626(f) for purposes of order attribution on the MIAX Pearl Equities proprietary data feeds. A RMO may designate a Retail Order to be identified as Retail when routed pursuant to the PAC routing option on an order-by-order basis or port-by-port basis,<sup>22</sup> which is the same manner as when an order is to be identified as Retail on the

---

<sup>21</sup> In such case, the Retail Order would also not be identified as retail on the Exchange's proprietary data feeds pursuant to Exchange Rule 2626(f).

<sup>22</sup> A RMO may designate a Retail Order to be identified as Retail when routed pursuant to the PAC routing option on an order-by-order basis via standard order entry protocols. A RMO may designate that all Retail Orders be identified as Retail when routed pursuant to the PAC routing option on a particular port by instructing the Exchange's Trading Operations personnel to designate that port as Retail or the RMO may designate a port as on their own via the Exchange's online portal. The Exchange provides an internet-facing portal via its website that Equity Members, including RMOs, access using unique login credentials. The online portal provides self-service functions to Equity Members. See Member Firm Portal User Manual, available at

Exchange's proprietary data feeds pursuant to Exchange Rule 2626(f).<sup>23</sup> Proposed Exchange Rule 2617(b)(5)(B)(iii) is based on current Exchange Rule 2626(f).

### Implementation

Due to the technological changes associated with this proposed change, the Exchange will issue a trading alert publicly announcing the implementation date of the proposed rule change. The Exchange anticipates that the implementation date will be in the second or third quarter of 2023.

#### b. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,<sup>24</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>25</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The proposal promotes just and equitable principles of trade because it enables RMOs to instruct the Exchange to identify a Retail Order as Retail when routed pursuant to the PAC routing option and potentially receive preferred pricing available to Retail Orders offered by the primary listing market, which primarily employ maker/taker fee structures. In

---

[https://www.miaxoptions.com/sites/default/files/knowledge-center/2022-06/MIAX\\_Exchanges\\_Member\\_Firm\\_Portal\\_User\\_Manual\\_05262022.pdf](https://www.miaxoptions.com/sites/default/files/knowledge-center/2022-06/MIAX_Exchanges_Member_Firm_Portal_User_Manual_05262022.pdf). A RMO that instructs the Exchange to identify all its Retail Orders as Retail on a particular port will be able to override such setting and designate any individual Retail Order from that port to not be identified as Retail via standard order entry protocols when submitting that particular order to the Exchange.

<sup>23</sup> The Exchange proposes to make a related change to Exchange Rule 2626(f) to, likewise, specify that a Retail Order to be identified as Retail pursuant to Exchange Rule 2626(f) will also be identified as Retail when being routed pursuant to the PAC routing option under Rule 2617(b)(5)(B)(1)(iii).

<sup>24</sup> 15 U.S.C. 78f(b).

<sup>25</sup> 15 U.S.C. 78f(b)(5).

addition, the proposal promotes just and equitable principles of trade because Retail Orders that a RMO has designated as Retail on an order-by-order or port-by-port-basis pursuant to Exchange Rule 2626(f) would also be identified as Retail when routed pursuant to the PAC routing option and this order-by-order or port-by-port optionality provides RMOs flexibility to identify their Retail Orders as Retail based upon how they manage their order flow. The proposal removes impediments to and perfects the mechanism of a free and open market and a national market system because it would enable the Exchange to better compete for Retail Order flow with another exchange that offers similar functionality.<sup>26</sup> The proposal would also promote just and equitable principles of trade because the potential to receive preferred pricing on the primary listing market should incentivize RMOs to enter additional Retail Order flow on the Exchange. This additional order flow would come in the form of displayed Limit Orders designated as RHO entered during continuous trading that may first check the System for available shares and then be posted to the MIAX Pearl Equities Book prior to being routed pursuant to the PAC routing option.<sup>27</sup> This may, in turn, deepen the available liquidity on the Exchange and attract additional order flow, benefiting all Exchange participants.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposal would enhance competition for retail order flow among exchanges by allowing the Exchange to provide Retail Orders with increased opportunities to

---

<sup>26</sup> See Cboe EDGX Exchange, Inc. ("Cboe EDGX") Rule 11.21(e). See also Securities Exchange Act Release No. 75824 (September 3, 2015), 80 FR 54638 (September 10, 2015) (SR-EDGX-2015-40).

<sup>27</sup> See Exchange Rules 2617(b)(5)(B)(1)(ii)(a) and (b)(5)(B)(2)(i).

receive preferred pricing provided to Retail Orders by the primary listing market when being routed pursuant to the PAC routing option. The proposal would not impede the national market system because it would not disrupt the ability of the primary listing market to conduct their opening, re-opening, and closing processes. The Exchange would continue to route orders in a form and manner currently accepted by the primary listing markets, which the Exchange understands currently includes accepting orders with a Retail identifier. The proposal would also enhance intermarket competition because it would enable the Exchange to better compete with other exchanges that offer similar functionality.<sup>28</sup> The proposal may further enhance intermarket competition by attracting additional Retail Order flow to the Exchange since a displayed Limit Order designated as RHO that is entered during continuous trading may first check the System for available shares and may be posted to the MIAX Pearl Equities Book prior to being routed pursuant to the PAC routing option.<sup>29</sup> This may, in turn, deepen the available liquidity on the Exchange and attract additional order flow, benefiting all Exchange participants, and improving competition between exchange markets. The proposal would also enhance intramarket competition because the proposed functionality would be available to all Equity Members that may qualify as a RMO and elect to have their Retail Orders identified as Retail when routed pursuant to the PAC routing option.

**5. 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.

**6. Extension of Time Period for Commission Action**

---

<sup>28</sup> See Cboe EDGX Rule 11.21(e). See also Securities Exchange Act Release No. 75824 (September 3, 2015), 80 FR 54638 (September 10, 2015) (SR-EDGX-2015-40).

<sup>29</sup> See Exchange Rules 2617(b)(5)(B)(1)(ii)(a) and (b)(5)(B)(2)(i).

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) of the Act<sup>30</sup> and Rule 19b-4(f)(6)<sup>31</sup> thereunder, the Exchange has designated this proposal as one that effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not 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.

The Exchange believes that the proposed rule change does not significantly affect the protection of investors or the public interest because identifying Retail Orders as Retail when they are routed pursuant to the PAC routing option enables those orders to potentially receive preferred pricing available to Retail Orders offered by the primary listing market. In addition, the proposed rule change does not raise any new or novel issues not already considered by the Commission because it is similar to the functionality of one other exchange that also allows for Retail Orders to the primary listing market's opening, re-opening, or closing process to be identified as Retail,<sup>32</sup> with one minor difference. Cboe EDGX offers the ROOC routing option which, like PAC, allows for orders to be routed to participate in the primary listing market's opening, re-opening, or closing process.<sup>33</sup> Cboe EDGX also allows all Retail Orders to be identified as Retail when being routed to an away Trading Center. Therefore, on Cboe EDGX, a

---

<sup>30</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>31</sup> 17 CFR 240.19b-4(f)(6).

<sup>32</sup> See Cboe EDGX Rule 11.21(d). See also Securities Exchange Act Release No. 75824 (September 3, 2015), 80 FR 54638 (September 10, 2015) (SR-EDGX-2015-40).

<sup>33</sup> See Cboe EDGX Rule 11.11(g)(8).

Retail Order routed pursuant to the ROOC routing option may be identified as Retail. One difference between Cboe EDGX and the Exchange is that Cboe EDGX allows all routed Retail Orders to be identified as Retail when routed to an away Trading Center pursuant to any of their available routing options. Meanwhile, for the time being,<sup>34</sup> the Exchange only proposes to identify Retail Orders as Retail when being routed pursuant to the PAC routing option. Orders routed pursuant to the PAC routing option include a time-in-force of RHO upon entry<sup>35</sup> and, therefore, may provide liquidity (and receive the preferred rebate) on the primary listing market prior to participating in the primary listing market's closing process, which primarily employ maker/taker fee structures, so long as the time-in-force employed by the primary listing market allows the order to provide liquidity. Another difference is Cboe EDGX's default behavior is to identify all Retail Orders as Retail when routed to an away Trading Center.<sup>36</sup> Meanwhile, the Exchange proposes to only identify a Retail Order as Retail when instructed by the RMO on an order-by-order or port-by-port basis pursuant to Exchange Rule 2626 as described above. The proposal does not impose any significant burden on competition because it would enable the

---

<sup>34</sup> The Exchange is evaluating expanding the ability to identify a Retail Order as Retail to all Retail Orders, but is now proposing to limit this option to the PAC routing option due to current technology priorities. The Exchange will file a proposed rule change with the Commission should it seek to expand the proposal to all Retail Orders.

<sup>35</sup> To ensure that orders coupled with the PAC routing option are eligible to participate in the primary listing market's opening, re-opening, or closing process, the Exchange routes Market Orders and displayed Limit Orders designated as RHO upon entry with a time-in-force accepted or required by the primary listing market. See Exchange Rule 26174(b)(5)(B). As such, the Exchange converts an order's time-in-force to a time-in-force accepted or required by the primary listing market when necessary only for purposes of routing that order to an away market.

<sup>36</sup> See Cboe EDGX Rule 11.12(e) (providing that "[u]nless otherwise instructed by the Retail Member Organization, a Retail Order will be identified as Retail when routed to an away Trading Center").

Exchange to better compete for Retail Order flow with another exchange that offers similar functionality described above.

For the foregoing reasons, this rule filing qualifies as a “non-controversial” rule change under Rule 19b-4(f)(6), which renders the proposed rule change effective upon filing with the Commission. 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.

**8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission**

The proposed rule change is based on Cboe EDGX Rule 11.21(e) with two minor differences. Cboe EDGX offers the ROOC routing option which, like PAC, allows for orders to be routed to participate in the primary listing market’s opening, re-opening, or closing process.<sup>37</sup> Cboe EDGX also allows all Retail Orders to be identified as Retail when being routed to an away Trading Center. Therefore, on Cboe EDGX, a Retail Order routed pursuant to the ROOC routing option may be identified as Retail. One difference between Cboe EDGX and the Exchange is that Cboe EDGX allows all routed Retail Orders to be identified as Retail when routed to an away Trading Center pursuant to any of their available routing options. Meanwhile, for the time being, the Exchange only proposed to identify Retail Orders as Retail when being routed pursuant to the PAC routing option. Orders routed pursuant to the PAC routing option include a time-in-force of RHO upon entry<sup>38</sup> and, therefore, may provide liquidity (and receive the preferred rebate) on the primary listing market prior to participating in the primary listing

---

<sup>37</sup> See Cboe EDGX Rule 11.11(g)(8).

<sup>38</sup> See supra note 35.



market's closing process, which primarily employ maker/taker fee structures, so long as the time-in-force employed by the primary listing market allows the order to provide liquidity.

Another difference is Cboe EDGX's default behavior is to identify all Retail Orders as Retail when routed to an away Trading Center.<sup>39</sup> Meanwhile, the Exchange proposes to only identify a Retail Order as Retail when instructed by the RMO on an order-by-order or port-by-port basis pursuant to Exchange Rule 2626 as described above.

**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. Notice of proposed rule for publication in the Federal Register.

5. Text of proposed rule change.

---

<sup>39</sup> See Cboe EDGX Rule 11.12(e) (providing that “[u]nless otherwise instructed by the Retail Member Organization, a Retail Order will be identified as Retail when routed to an away Trading Center”).

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. SR-PEARL-2023-15)

March \_\_\_\_\_, 2023

Self-Regulatory Organizations: Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Exchange Rules 2617 and 2618

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March\_\_\_\_, 2023, MIAX PEARL, LLC (“MIAX Pearl” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I, 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 proposes to amend Exchange Rules 2617(b)(5) and 2626(f) related to Retail Orders<sup>3</sup> routed pursuant to the Route to Primary (“PAC”) routing option when trading equity securities on the Exchange’s equity trading platform (referred to herein as “MIAX Pearl Equities”).

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

---

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

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

<sup>3</sup> A “Retail Order” is an agency or riskless principal order that meets the criteria of FINRA Rule 5320.03 that originates from a natural person and is submitted to the Exchange by a Retail Member Organization, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. See Exchange Rule 2626(a)(2).

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 Exchange Rule 2617(b)(5) related to Retail Orders routed pursuant to the PAC routing option when trading equity securities on MIAX Pearl Equities. Exchange Rule 2626 defines Retail Orders and sets forth the requirements<sup>4</sup> that Equity Members<sup>5</sup> must complete prior to sending Retail Orders to the Exchange. Equity Members that seek to become a Retail Member Organization (“RMO”)<sup>6</sup> must complete an attestation in a form required by the Exchange that substantially all orders submitted as Retail Orders will qualify as such under Exchange Rule 2626. Such Equity Members must then be approved by the Exchange as a RMO and then may designate a Retail Order to be identified as Retail on the Exchange’s proprietary data feeds on an order-by-order or port-by-port basis pursuant to Exchange Rule 2626(f). As proposed, those same Equity Members

---

<sup>4</sup> Members must submit a signed written attestation, in a form prescribed by the Exchange, that they have implemented policies and procedures that are reasonably designed to ensure that substantially all orders designated by the Member as a “Retail Order” comply with the above requirements. See Exchange Rule 2626(b).

<sup>5</sup> The term “Equity Member” is a Member authorized by the Exchange to transact business on MIAX Pearl Equities. See Exchange Rule 1901.

<sup>6</sup> A “Retail Member Organization” or “RMO” is an Equity Member (or a division thereof) that has been approved by the Exchange under Exchange Rule 2626 to submit Retail Orders. See Exchange Rule 2626(a)(1).

that are approved as RMOs would then be able to also identify Retail Orders as Retail when routed to the primary listing market's opening, re-opening, or closing process pursuant to the PAC routing option,<sup>7</sup> described in more detail below.

The Exchange offers its Equity Members optional routing functionality that allows them to use the Exchange to access liquidity on other Trading Centers.<sup>8</sup> The functionality 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,<sup>9</sup> 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<sup>10</sup> and displayed Limit Orders<sup>11</sup> with a time-in-force of Regular Hours Only ("RHO")<sup>12</sup> that the entering firm wishes to designate for

---

<sup>7</sup> See Exchange Rule 2617(b)(5).

<sup>8</sup> 17 CFR 242.600(b)(95) (defining "Trading Center" as "a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent").

<sup>9</sup> 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).

<sup>10</sup> See Exchange Rule 2614(a)(2).

<sup>11</sup> See Exchange Rule 2614(a)(1).

<sup>12</sup> Exchange Rule 2614(b)(2) defines "Regular Hours Only" or "RHO" as "[a]n order that is

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.

Exchange Rule 2617(b)(5)(B)(1)(i) describes how orders are routed to participate in the primary listing market’s opening or re-opening process pursuant to the PAC routing option and provides, in sum, that displayed Limit Orders and Market Orders with a time-in-force of 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. Exchange Rule 2617(b)(5)(B)(1)(i) further provides that if 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.

Exchange Rule 2617(b)(5)(B)(1)(ii) describes how orders are routed to participate in the primary listing market’s closing process pursuant to the PAC routing option. Exchange

---

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.” To ensure that orders coupled with the PAC routing option are eligible to participate in the primary listing market’s opening, re-opening, or closing process, the Exchange routes Market Orders and displayed Limit Orders designated as RHO upon entry with a time-in-force accepted or required by the primary listing market. See Exchange Rule 26174(b)(5)(B). As such, the Exchange converts an order’s time-in-force to a time-in-force accepted or required by the primary listing market when necessary only for purposes of routing that order to an away market.

Rule 2617(b)(5)(B)(1)(ii)(a) covers Limit Orders and provides, in sum, that a Limit Order designated as RHO will be routed to participate in the primary listing market's closing process prior to the primary listing market's order entry cut-off time. If a Limit Order designated as RHO is 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, the Exchange will check the System for available shares and then route the remaining shares to participate in the primary listing market's closing process. Exchange Rule 2617(b)(5)(B)(1)(ii)(b) covers Market Orders and provides, in sum, that a Market Order designated as RHO is not eligible to be routed to participate in the primary listing market's closing process, unless such 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.<sup>13</sup> 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.<sup>14</sup>

Going forward, the Exchange proposes that Retail Orders that a RMO has designated as Retail pursuant to Exchange Rule 2626(f) would also be identified as Retail when routed to the primary listing market's opening, re-opening, or closing process pursuant to the PAC

---

<sup>13</sup> The Exchange notes that this functionality was implemented on March 28, 2023. See MIAX Pearl Equities - Enhancement for Market Orders with a Primary Auction (PAC) Routing Strategy will be Activated on Tuesday, March 28, 2023, available at <https://www.miaxoptions.com/alerts/2023/03/22/miax-pearl-equities-enhancement-market-orders-primary-auction-pac-routing>. See also Securities Exchange Act Release No. 95298 (July 15, 2022), 87 FR 43579 (July 21, 2022) (SR-PEARL-2022-29).

<sup>14</sup> Id.

routing option,<sup>15</sup> so that such order may receive preferred pricing available to Retail Orders offered by the primary listing market.<sup>16</sup> The Exchange notes that the proposal will primarily benefit displayed Limit Orders identified as Retail that are routed to participate in the primary listing market's closing process because, unlike before the opening or re-opening process, continuous trading is in effect prior to the closing process during which such routed Retail Orders may be executed and eligible to receive preferred pricing.<sup>17</sup>

The Exchange routes orders in equity securities via one or more routing brokers that are not affiliated with the Exchange.<sup>18</sup> Those routing broker-dealers are required to complete

---

<sup>15</sup> The Exchange currently designates all routable orders, other than those routed pursuant to the PAC routing option, as IOC when routing such order to an away market, regardless of the time-in-force included with the order upon entry. Exchange Rule 2617(b)(4) describes this functionality and currently provides that the System will designate Market Orders and marketable Limit Orders that are fully or partially routed to an away Trading Center as IOC. The Exchange does not propose to identify as Retail a Retail Order that is being routed as IOC and not pursuant to the PAC routing option because such orders would remove liquidity on entry or be cancelled and, therefore, not be eligible to receive preferred pricing available to liquidity adding orders by primary listing markets, which primarily employ maker/taker fee structures. See infra note 16. Orders routed pursuant to the PAC routing option include a time-in-force of RHO when entered on the Exchange and, therefore, may provide liquidity (and receive a preferred rebate) on the primary listing market prior to participating in the primary listing market's closing process if the time-in-force employed by the primary listing market allows the order to provide liquidity. The Exchange notes that it would convert an order's time-in-force to a time-in-force accepted or required by the primary listing market when necessary only for purposes of routing that order to an away market.

<sup>16</sup> See, e.g., Cboe BZX fee schedule available at [https://www.cboe.com/us/equities/membership/fee\\_schedule/bzx/](https://www.cboe.com/us/equities/membership/fee_schedule/bzx/) (providing an enhanced rebate of \$0.0032 to Retail Orders that add liquidity); and NYSE fee schedule available at [https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE\\_Price\\_List.pdf](https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf) (providing an enhanced rebate of \$0.0032 to Retail Orders that add liquidity).

<sup>17</sup> While the proposal may benefit Market Orders, the Exchange notes that it would be an edge case because of the limited scenario where the Exchange would route Market Orders to the primary listing market's closing process, namely, when the security is halted and continuous trading is not in effect. See Exchange Rule 2617(b)(5)(B)(1)(ii)(b).

<sup>18</sup> This routing process is described under Exchange Rule 2617(b)(1).

the required attestation to qualify as RMOs on the Exchange pursuant to Exchange Rule 2626, described above. Those routing broker dealers would likewise be required to complete any requirements by the primary listing market to enter Retail Orders on that market and to qualify for any enhanced pricing. To the extent the Exchange routes a Retail Order identified as Retail via a routing broker-dealer to a primary listing market, it will ensure that it does so in compliance with that market's rules governing its retail orders, including that the order satisfies that market's definition of "Retail Order."<sup>19</sup>

As discussed above, RMOs may designate a Retail Order to be identified as Retail on the Exchange's proprietary data feeds on an order-by-order or port-by-port basis pursuant to Exchange Rule 2626(f). Those same Retail Orders that are to be identified as Retail pursuant to Exchange Rule 2626(f) would also be identified as Retail when routed pursuant to the PAC routing option. The identification of a Retail Order as Retail on the Exchange's proprietary data feed and when being routed pursuant to the PAC routing option would implicate orders entered during continuous trading that are to be routed to participate in the primary listing market's closing process pursuant to the PAC routing option. Such Retail Orders that are to be identified as Retail when routed pursuant to the PAC routing option entered before market open that are to be routed to participate in the primary listing market's opening process or entered when a security is halted that are to be routed to participate in the primary listing market's re-opening process are entered during times when continuous trading is not in effect on the Exchange<sup>20</sup> and would, therefore, only be identified as Retail when being routed pursuant to the PAC routing option. The Exchange will not identify a Retail Order as Retail

---

<sup>19</sup> Any portion of a routed Retail Order that is not executed on the primary listing market that is returned the Exchange will continue to be treated as a Retail Order.

<sup>20</sup> The Exchange does not disseminate quote and trade data on its proprietary data feeds when it is not engaged in continuous trading.



when routed pursuant to the PAC routing option unless instructed by the RMO to do so pursuant to Exchange Rule 2626, either on an order-by-order or port-by-port basis. This behavior would be codified under new subparagraph (iii) under Exchange Rule 2617(b)(5)(B), which would state that, a RMO (as defined in Rule 2626(a)(1)) may designate a Retail Order (as defined in Rule 2626(a)(2)) to be identified as Retail on an order-by-order basis or instruct the Exchange to identify all of its Retail Orders as Retail on a port-by-port basis. Proposed Exchange Rule 2617(b)(5)(B)(iii) would also provide that if so designated, a Retail Order will be identified as Retail when routed pursuant to Exchange Rule 2617(b)(5)(B)(1)(i) and (ii), as well as on the Exchange's proprietary data feeds pursuant to Rule 2626(f). Proposed Exchange Rule 2617(b)(5)(B)(iii) would further provide that a RMO that instructs the Exchange to identify all its Retail Orders as Retail on a particular port will be able to override such setting and designate any individual Retail Order from that port to not be identified as Retail when routed to the primary listing market pursuant to Exchange Rule 2617(b)(5)(B)(1)(i) and (ii).<sup>21</sup> As stated above, RMOs may designate their orders as Retail in accordance with Exchange Rule 2626(f) for purposes of order attribution on the MIAX Pearl Equities proprietary data feeds. A RMO may designate a Retail Order to be identified as Retail when routed pursuant to the PAC routing option on an order-by-order basis or port-by-port basis,<sup>22</sup> which is the same manner as when an order is to be identified as Retail on the

---

<sup>21</sup> In such case, the Retail Order would also not be identified as retail on the Exchange's proprietary data feeds pursuant to Exchange Rule 2626(f).

<sup>22</sup> A RMO may designate a Retail Order to be identified as Retail when routed pursuant to the PAC routing option on an order-by-order basis via standard order entry protocols. A RMO may designate that all Retail Orders be identified as Retail when routed pursuant to the PAC routing option on a particular port by instructing the Exchange's Trading Operations personnel to designate that port as Retail or the RMO may designate a port as on their own via the Exchange's online portal. The Exchange provides an internet-facing portal via its website that Equity Members, including RMOs, access using unique login credentials. The online portal provides self-service functions to Equity Members. See

Exchange's proprietary data feeds pursuant to Exchange Rule 2626(f).<sup>23</sup> Proposed Exchange Rule 2617(b)(5)(B)(iii) is based on current Exchange Rule 2626(f).

### Implementation

Due to the technological changes associated with this proposed change, the Exchange will issue a trading alert publicly announcing the implementation date of the proposed rule change. The Exchange anticipates that the implementation date will be in the second or third quarter of 2023.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,<sup>24</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>25</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The proposal promotes just and equitable principles of trade because it enables RMOs to instruct the Exchange to identify a Retail Order as Retail when routed pursuant to the PAC routing option and potentially receive preferred pricing available to Retail Orders offered by the primary listing market, which primarily employ maker/taker fee structures. In addition, the proposal promotes just and equitable principles of trade

---

Member Firm Portal User Manual, available at [https://www.miaxoptions.com/sites/default/files/knowledge-center/2022-06/MIAX\\_Exchanges\\_Member\\_Firm\\_Portal\\_User\\_Manual\\_05262022.pdf](https://www.miaxoptions.com/sites/default/files/knowledge-center/2022-06/MIAX_Exchanges_Member_Firm_Portal_User_Manual_05262022.pdf). A RMO that instructs the Exchange to identify all its Retail Orders as Retail on a particular port will be able to override such setting and designate any individual Retail Order from that port to not be identified as Retail via standard order entry protocols when submitting that particular order to the Exchange.

<sup>23</sup> The Exchange proposes to make a related change to Exchange Rule 2626(f) to, likewise, specify that a Retail Order to be identified as Retail pursuant to Exchange Rule 2626(f) will also be identified as Retail when being routed pursuant to the PAC routing option under Rule 2617(b)(5)(B)(1)(iii).

<sup>24</sup> 15 U.S.C. 78f(b).

<sup>25</sup> 15 U.S.C. 78f(b)(5).

because Retail Orders that a RMO has designated as Retail on an order-by-order or port-by-port-basis pursuant to Exchange Rule 2626(f) would also be identified as Retail when routed pursuant to the PAC routing option and this order-by-order or port-by-port optionality provides RMOs flexibility to identify their Retail Orders as Retail based upon how they manage their order flow. The proposal removes impediments to and perfects the mechanism of a free and open market and a national market system because it would enable the Exchange to better compete for Retail Order flow with another exchange that offers similar functionality.<sup>26</sup> The proposal would also promote just and equitable principles of trade because the potential to receive preferred pricing on the primary listing market should incentivize RMOs to enter additional Retail Order flow on the Exchange. This additional order flow would come in the form of displayed Limit Orders designated as RHO entered during continuous trading that may first check the System for available shares and then be posted to the MIAX Pearl Equities Book prior to being routed pursuant to the PAC routing option.<sup>27</sup> This may, in turn, deepen the available liquidity on the Exchange and attract additional order flow, benefiting all Exchange participants.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposal would enhance competition for retail order flow among exchanges by allowing the Exchange to provide Retail Orders with increased opportunities to receive preferred pricing provided to Retail Orders by the primary listing market when being routed pursuant to the PAC routing option. The proposal would not impede the national market system because it would not disrupt the ability of the primary listing market to conduct their

---

<sup>26</sup> See Cboe EDGX Exchange, Inc. (“Cboe EDGX”) Rule 11.21(e). See also Securities Exchange Act Release No. 75824 (September 3, 2015), 80 FR 54638 (September 10, 2015) (SR-EDGX-2015-40).

<sup>27</sup> See Exchange Rules 2617(b)(5)(B)(1)(ii)(a) and (b)(5)(B)(2)(i).

opening, re-opening, and closing processes. The Exchange would continue to route orders in a form and manner currently accepted by the primary listing markets, which the Exchange understands currently includes accepting orders with a Retail identifier. The proposal would also enhance intermarket competition because it would enable the Exchange to better compete with other exchanges that offer similar functionality.<sup>28</sup> The proposal may further enhance intermarket competition by attracting additional Retail Order flow to the Exchange since a displayed Limit Order designated as RHO that is entered during continuous trading may first check the System for available shares and may be posted to the MIAX Pearl Equities Book prior to being routed pursuant to the PAC routing option.<sup>29</sup> This may, in turn, deepen the available liquidity on the Exchange and attract additional order flow, benefiting all Exchange participants, and improving competition between exchange markets. The proposal would also enhance intramarket competition because the proposed functionality would be available to all Equity Members that may qualify as a RMO and elect to have their Retail Orders identified as Retail when routed pursuant to the PAC routing option.

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

Written comments were neither solicited nor received.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the

---

<sup>28</sup> See Cboe EDGX Rule 11.21(e). See also Securities Exchange Act Release No. 75824 (September 3, 2015), 80 FR 54638 (September 10, 2015) (SR-EDGX-2015-40).

<sup>29</sup> See Exchange Rules 2617(b)(5)(B)(1)(ii)(a) and (b)(5)(B)(2)(i).

Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act<sup>30</sup> and Rule 19b-4(f)(6)<sup>31</sup> 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

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

Comments may be submitted by any of the following methods:

##### Electronic comments:

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

or

- Send an e-mail [to rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-PEARL-2023-15 on the subject line

##### Paper comments:

---

<sup>30</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>31</sup> 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 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.

- 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-2023-15. 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-2023-15 and should be submitted on or before [insert date 21 days from publication in the Federal Register]. For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>32</sup>

Vanessa Countryman  
Secretary

---

<sup>32</sup> 17 CFR 200.30-3(a)(12).

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

## MIAX PEARL, LLC Rules

\*\*\*\*\*

### Rule 2617. Order Execution and Routing

Subject to the restrictions under these Exchange Rules or the Exchange Act and the rules and regulations thereunder, orders shall be matched for execution and routed in accordance with this Exchange Rule 2617.

(a) (No change).

(b) **Routing to Away Trading Centers.** Unless a User elects that the order be non-routable, if a Market Order or Marketable Limit Order has not been executed in its entirety pursuant to paragraph (a) above, the order shall be eligible for additional processing under one or more of the routing options listed under paragraph (b)(5) below.

(1) – (4) (No change).

(5) **Routing Options.** Routing options may be combined with all available order types and times-in-force instructions, with the exception of order types and times-in-force instructions whose terms are inconsistent with the terms of a particular routing option. The System will consider the quotations only of accessible Trading Centers. The term “System routing table” refers to the proprietary process for determining the specific trading venues to which the System routes orders and the order in which it routes them. The Exchange reserves the right to maintain a different System routing table for different routing options and to modify the System routing table at any time without notice. The System routing options are:

(A) (No change).

(B) **Route to Primary Auction (“PAC”).** PAC is 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, NYSE, Nasdaq, NYSE American, or NYSE Arca) if received before the opening, re-opening, or closing process of such market. The System will designate such orders routed pursuant to the PAC routing option with the time-in-force accepted by the primary listing market. Displayed Limit Orders coupled with the PAC routing option will be eligible to be routed pursuant to the PI routing option described under paragraph (b)(5)(C) of this Rule.

(1) **Routing to Opening, Re-Opening, or Closing Process.**

(i) **Opening and Re-Opening Process.** 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. If 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. A displayed Limit Order designated as RHO will be routed to participate in the primary listing market's re-opening process upon the announcement of a regulatory halt, suspension, or pause. A displayed Limit Order or Market Order designated as RHO received after the announcement of a regulatory halt, suspension, or pause, but before the time of the primary listing market's re-opening process, will be routed to participate in the primary listing market's re-opening process upon receipt. A Market Order designated as RHO not received during times set forth above will be cancelled.

(a) **Limit Orders.** Any shares that remain unexecuted after attempting to execute in the primary listing market's opening or re-opening process will either be posted to the MIAX Pearl Equities Book, executed, or routed pursuant to the PI routing option described under paragraph (b)(5)(C) of this Rule.

(b) **Market Orders.** Any shares that remain unexecuted after attempting to execute in the primary listing market's opening or re-opening process will be cancelled.

(ii) **Closing Process.**

(a) **Limit Orders.** A Limit Order designated as RHO will be routed to participate in the primary listing market's closing process prior to the primary listing market's order entry cut-off time. If a Limit Order designated as RHO is 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, the Exchange will check the System for available shares and then route the remaining shares to participate in the primary listing market's closing process.

(b) **Market Orders.** A Market Order designated as RHO is not eligible to be routed to participate in the primary listing market's closing process, unless such 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 Order 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.

(iii) **Retail Orders.** A Retail Member Organization (as defined in Rule 2626(a)(1)) may designate a Retail Order (as defined in Rule 2626(a)(2)) to be identified as Retail on an order-by-order basis or instruct the Exchange to identify all of its orders as Retail on a port-by-port basis. If so designated, a Retail Order will be identified as Retail when routed pursuant to paragraphs (i) and (ii) above, as well as on the Exchange's proprietary data feeds pursuant to Rule 2626(f). A Retail Member Organization that instructs the Exchange to identify all its Retail Orders as Retail on a particular port will be able to override such setting and designate any individual Retail Order from that port to not be identified as Retail when routed to the primary listing market pursuant to paragraphs (i) and (ii) above.

(2) (No change).

\*\*\*\*\*

#### **Rule 2626. Retail Order Attribution Program**

(a) – (e) (No change).

(f) **Attribution.** A Retail Member Organization may designate a Retail Order to be identified as Retail on the Exchange's proprietary data feeds on an order-by-order basis. A Retail Member Organization may also instruct the Exchange to identify all its Retail Orders as Retail on a port-by-port basis. A Retail Member Organization that instructs the Exchange to identify all its Retail Orders as Retail on a particular port will be able to override such setting and designate any individual Retail Order from that port as Attributable or as Non-Attributable, as set forth in Exchange Rule 2614(c)(6). A Retail Order to be identified as Retail pursuant to this paragraph will also be identified as Retail when being routed pursuant to the PAC routing option under Rule 2617(b)(5)(B)(1)(iii).

\*\*\*\*\*