

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-97236; File No. SR-PEARL-2023-15)

March 31, 2023

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Exchange Rules 2617 and 2626 Regarding Retail Orders Routed Pursuant to the Route to Primary Auction Routing Option

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 March 28, 2023, MIAX PEARL, LLC (“MIAX Pearl” or the “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the 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 Orders³ 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 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).

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

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

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

1. Purpose

The purpose of the proposed rule change is to amend 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 requirements⁴ that Equity Members⁵ must complete prior to sending Retail Orders to the Exchange. Equity Members that seek to become a Retail Member Organization (“RMO”)⁶ 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

⁴ 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).

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

⁶ 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).

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 PAC routing option,⁷ 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.⁸ 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,⁹ 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

⁷ See Exchange Rule 2617(b)(5).

⁸ 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”).

⁹ 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).

PAC as a routing option for Market Orders¹⁰ and displayed Limit Orders¹¹ with a time-in-force of Regular Hours Only (“RHO”)¹² that the entering firm wishes to designate for participation in the opening, re-opening (following a regulatory halt, suspension, or pause), or closing process of a primary listing market (Cboe BZX Exchange, Inc. (“BZX”), the New York Stock Exchange LLC (“NYSE”), The Nasdaq Stock Market LLC (“Nasdaq”), NYSE American LLC (“NYSE American”), or NYSE Arca, Inc. (“NYSE Arca”)) if received before the opening, re-opening, or closing process of such market.

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

¹⁰ See Exchange Rule 2614(a)(2).

¹¹ See Exchange Rule 2614(a)(1).

¹² Exchange Rule 2614(b)(2) defines “Regular Hours Only” or “RHO” as “[a]n order that is designated for execution only during Regular Trading Hours, which includes the Opening Process for equity securities. An order with a time-in-force of RHO entered into the System before the opening of business on the Exchange as determined pursuant to Exchange Rule 2600 will be accepted but not eligible for execution until the start of Regular Trading Hours.” 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.

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 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.¹³ 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.¹⁴

¹³ The Exchange notes that this functionality was implemented on March 28, 2023. See MIAAX 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.miaaxoptions.com/alerts/2023/03/22/miaax-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).

¹⁴ Id.

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,¹⁵ so that such order may receive preferred pricing available to Retail Orders offered by the primary listing market.¹⁶ 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.¹⁷

¹⁵ 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.

¹⁶ See, e.g., Cboe BZX fee schedule available at 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 (providing an enhanced rebate of \$0.0032 to Retail Orders that add liquidity).

¹⁷ 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

The Exchange routes orders in equity securities via one or more routing brokers that are not affiliated with the Exchange.¹⁸ 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 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."¹⁹

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

halted and continuous trading is not in effect. See Exchange Rule 2617(b)(5)(B)(1)(ii)(b).

¹⁸ This routing process is described under Exchange Rule 2617(b)(1).

¹⁹ 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.

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 Exchange²⁰ 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 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).²¹ 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

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

²¹ 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).

Retail when routed pursuant to the PAC routing option on an order-by-order basis or port-by-port basis,²² which is the same manner as when an order is to be identified as Retail on the Exchange's proprietary data feeds pursuant to Exchange Rule 2626(f).²³ 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.

²² 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 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.

²³ 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).

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,²⁴ in general, and furthers the objectives of Section 6(b)(5),²⁵ 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 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.²⁶ The proposal would also promote just and equitable principles of trade because the potential to receive preferred pricing on the primary listing market should

²⁴ 15 U.S.C. 78f(b).

²⁵ 15 U.S.C. 78f(b)(5).

²⁶ 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).

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.²⁷ 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 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.²⁸ 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

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

²⁸ 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).

for available shares and may be posted to the MIAX Pearl Equities Book prior to being routed pursuant to the PAC routing option.²⁹ 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 Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act³⁰ and Rule 19b-4(f)(6)³¹ 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

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

³⁰ 15 U.S.C. 78s(b)(3)(A).

³¹ 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.

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. Please include File Number SR-PEARL-2023-15 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-PEARL-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 website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F

Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change.

Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-PEARL-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.³²

Sherry R. Haywood

Assistant Secretary

³² 17 CFR 200.30-3(a)(12).