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

File No. * SR 2023 - * 38

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"/>
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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)	Submit with link to Prefiling or Request for Waiver option
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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 *).

The Exchange proposes to amend Exchange Rule 402, Criteria for Underlying Securities, to permit an underlying security having a market capitalization of at least \$3 billion based upon the offering price of its initial public offering, to be listed and traded starting on or after the second business day following the initial public offering day.

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 * Tanya Last Name * Kitaigorovski

Title * AVP, Associate Counsel

E-mail * tkitaigorovski@miaxglobal.com

Telephone * (609) 413-5787 Fax

Signature

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

Date 08/23/2023 (Title *)

By Tanya Kitaigorovski AVP, Associate Counsel
(Name *)

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

Tanya Kitaigorovski Date: 2023.08.23 14:16:48 -0400

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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SR-PEARL-2023-38 19b4.docx

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 *

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SR-PEARL-2023-38 - 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 *

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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

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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

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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

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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

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SR-PEARL-2023-38 Exhibit 5.docx

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

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. **Text of the Proposed Rule Change**

(a) MIAX PEARL, LLC (“MIAX Pearl” or “Exchange”), pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)¹ and Rule 19b-4 thereunder,² proposes to amend Exchange Rule 402.

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 or his designee 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 by the Exchange is necessary for the filing of the proposed rule change.

Questions and comments on the proposed rule change may be directed to Tanya Kitaigorovski, AVP, Associate Counsel, at (609) 413-5787.

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

a. Purpose

The Exchange proposes to amend Exchange Rule 402, Criteria for Underlying Securities, to permit an underlying security having a market capitalization of at least \$3 billion based upon the offering price of its initial public offering, to be listed and traded starting on or after the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

second business day following the initial public offering day. The Exchange is proposing a listing rule change that is substantially similar in all material respects to the proposal approved for NYSE American LLC (“NYSE American”).³ Following discussions with other exchanges and a cross-section of industry participants and in coordination with the Listed Options Market Structure Working Group (“LOMSWG”) (collectively, the “Industry Working Group”), NYSE American filed a proposed rule change,⁴ which was recently approved, to modify the standard for the listing and trading of options on “covered securities” to reduce the time to market. At this time, the Exchange proposes to adopt an identical rule.

Rule 402 sets forth the guidelines to be considered in evaluating for option transactions underlying securities that are “covered securities,” as defined in Section 18(b)(1)(A) of the Securities Act of 1933 (hereinafter “covered security” or “covered securities”).⁵ Currently, the Exchange permits the listing of an option on an underlying covered security that, amongst other things, has a market price of at least \$3.00 per share for the previous three consecutive business days preceding the date on which the Exchange submits a certificate to The Options Clearing Corporation (“OCC”) to list and trade options on the underlying security (the “three-day lookback period”).⁶ Under the current rule, if an initial public offering (“IPO”) occurs on a Monday, the earliest date the Exchange could submit its listing certificate to OCC would be on

³ See Securities Exchange Act Release No. 98013 (July 27, 2023) 88 FR 50927 (August 2, 2023)(SR-NYSEAMER-2023-27)(Order Granting Approval of a Proposed Rule Change to Amend Rule 915 (Criteria for Underlying Securities) to Accelerate the Listing of Options on Certain IPOs).

⁴ Id.

⁵ Rule 402(a) requires that, for underlying securities to be eligible for option transactions, such securities must be duly registered and be an “NMS stock” as defined in Rule 600 of Regulation NMS under the Act and will be characterized by a substantial number of outstanding shares which are widely held and actively traded. See Rule 402(a)(1) and (2).

⁶ See Rule 402(b)(5)(i). The Exchange is not proposing to make any changes to the guidelines for listing securities that are not a “covered security.” See Rule 402(b)(5)(ii).

Thursday, with the market price determined by the closing price over the three-day lookback period from Monday through Wednesday. The option on the IPO'd security would then be eligible for trading on the Exchange on Friday (i.e., within four business days of the IPO inclusive of the day the listing certificate is submitted to OCC).⁷

The Exchange notes that the three-day look back period helps ensure that options on underlying securities may be listed and traded in a timely manner while also allowing time for OCC to accommodate the certification request. However, there are certain large IPOs that issue high-priced securities -- well above the \$3.00 per share threshold -- that would obviate the need for the three-day lookback period. In this regard, the Industry Working Group has recently identified proposed changes to Rule 402(b)(5)(i) that would help options on covered securities that have a market capitalization of at least \$3 billion based upon the offering price of its IPO come to market earlier. The proposed change, which is intended to be harmonized across options exchanges, is designed to provide investors the opportunity to hedge their interest in IPO investments in a shorter amount of time than what is currently permitted.⁸ The Exchange believes that options serve a valuable tool to the trading community and help markets function efficiently by mitigating risk. To that end, the Exchange believes that the absence of options in the early days after an IPO may heighten volatility in the trading of IPO'd securities.

Accordingly, the Exchange proposes to modify Rule 402 to waive the three-day lookback period for covered securities that have a market capitalization of at least \$3 billion based upon

⁷ See proposed Rule 402(b)(5)(i). The Exchange proposes a non-substantive change to number the existing and proposed criteria for covered securities as (A) and (B) of paragraph (5)(i). See proposed Rule 402(b)(5)(i).

⁸ While the Exchange acknowledges that market participants may utilize options for speculative purposes (in addition to as a hedging tool), the Exchange believes (as set forth below) that its existing surveillance technologies and procedures adequately address potential violations of exchange rules and federal securities laws applicable to trading on the Exchange.

the offering price of the IPO of such securities and to allow options on such securities to be listed and traded starting on or after the second business day following the initial public offering day (i.e., not inclusive of the day of the IPO).⁹ NYSE American has stated that it has reviewed trading data for IPO'd securities dating back to 2017 and is unaware of any such security that achieved a market capitalization of \$3 billion based upon the offering price of its IPO that would not have also qualified for listing options based on the three-day lookback requirement. Specifically, NYSE American has determined that 202 of the 1,179 IPOs that took place between January 1, 2017, and October 21, 2022, met the \$3 billion market capitalization/IPO offering price threshold. Options on all 202 of those IPO shares subsequently satisfied the three-day lookback requirement for listing and trading, i.e., none of these large IPOs closed below the \$3.00/share threshold during its first three days of its trading. As such, the Exchange believes the proposed capitalization threshold of \$3 billion based upon the offering price of its IPO is appropriate.

Under the proposed rule, if an IPO for a company with a market capitalization of \$3 billion based upon the offering price of its IPO occurs on a Monday, the Exchange could submit its listing certificate to OCC (to list and trade options on the IPO'd security) as soon as all the other requirements for listing are satisfied. If, on Tuesday, all requirements are deemed satisfied, the IPO'd security could then be eligible for trading on the Exchange on Wednesday (i.e., starting on or after the second business day following the IPO day). Thus, the proposal could potentially accelerate the listing of options on IPO'd securities by two days.

⁹ The Exchange acknowledges that the Options Listing Procedures Plan ("OLPP") requires that the listing certificate be provided to OCC no earlier than 12:01 a.m. and no later than 11:00 a.m. (Chicago time) on the trading day prior to the day on which trading is to begin. See the OLPP, at p. 3., available here: https://ncuocblobdev.blob.core.windows.net/media/theocc/media/clearing-services/services/options_listing_procedures_plan.pdf. The OLPP is a national market system plan that, among other things, sets forth procedures governing the listing of new options series.

The Exchange believes the proposed change would allow options on IPO'd securities to come to market sooner without sacrificing investor protection. The Exchange represents that trading in IPO'd securities -- like all other securities traded on the Exchange -- is subject to surveillances administered by the Exchange and to cross-market surveillances administered by FINRA on behalf of the Exchange. Those surveillances are designed to detect violations of Exchange rules and applicable federal securities laws.¹⁰ The Exchange represents that those surveillances are adequate to reasonably monitor Exchange trading of IPO'd securities in all trading sessions and to reasonably deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.¹¹ As such, the Exchange believes that its existing surveillance technologies and procedures, coupled with NYSE American's findings related to the IPOs reviewed as described herein, adequately address potential concerns regarding possible manipulation or price stability.

Implementation Date

The Exchange will announce the effective date of the proposed change by Notice distributed to all Members.¹² The Exchange will coordinate the effective date to coincide with the implementation of the proposed change on the other options exchanges.

b. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of

¹⁰ FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

¹¹ See supra note 8.

¹² The term "Member" means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed "members" under the Exchange Act. See Exchange Rule 100.

Section 6(b) of the Act.¹³ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁴ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

In particular, the Exchange believes the proposed change would facilitate options transactions and would remove impediments to and perfect the mechanism of a free and open market and a national market system, which would, in turn, protect investors and the public interest by providing an avenue for options on IPO'd securities to come to market earlier. The Exchange notes that the three-day look back period helps ensure that options on underlying securities may be listed and traded in a timely manner while also allowing time for OCC to accommodate the certification request. However, there are certain large IPOs that issue high-priced securities -- well above the \$3.00 per share threshold -- that would obviate the need for the three-day lookback period. As noted above, NYSE American has reviewed trading data for IPO'd securities dating back to 2017 and is unaware of an IPO'd security with a market capitalization of \$3 billion or more (based upon the offering price of its IPO) that subsequently would have failed to qualify for listing and trading as options under the three-day lookback requirement. The Exchange believes that the proposed amendment, which would be harmonized across options exchanges, would remove impediments to and perfect the mechanism of a free

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

and open market and a national market system by providing an avenue for investors to hedge their interest in IPO investments in a shorter amount of time than what is currently permitted. The Exchange believes that options serve a valuable tool to the trading community and help markets function efficiently by mitigating risk. To that end, the Exchange believes that the absence of options in the early days after an IPO may heighten volatility to IPO'd securities.¹⁵

Further, as noted herein, the Exchange believes the proposed change would allow options on IPO'd securities to come to market sooner (i.e., at least two business days post-IPO not inclusive of the day of the IPO) without sacrificing investor protection. The Exchange represents that trading in IPO'd securities -- like all other securities traded on the Exchange -- is subject to surveillances administered by the Exchange and to cross-market surveillances administered by FINRA on behalf of the Exchange. Those surveillances are designed to detect violations of Exchange rules and applicable federal securities laws.¹⁶ The Exchange represents that those surveillances are adequate to reasonably monitor Exchange trading of IPO'd securities in all trading sessions and to reasonably deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange, including wrongful efforts to manipulate the prices of those securities in order to bring them in compliance with the \$3.00/share threshold for the listing of options. As such, the Exchange believes that its existing surveillance technologies and procedures, coupled with NYSE American's findings related to the IPOs reviewed as described herein, would adequately address potential concerns regarding possible manipulation or price stability.

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

¹⁵ See supra note 8.

¹⁶ See supra note 10.

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In this regard and as indicated above, the Exchange notes that the rule change is being proposed as a competitive response to a filing submitted by NYSE American that was recently approved by the Commission.¹⁷ The Exchange anticipates that the other options exchanges will adopt substantively similar proposals, such that there would be no burden on intermarket competition from the Exchange's proposal.

Accordingly, the proposed change is not meant to affect competition among the options exchanges. For these reasons, the Exchange believes that the proposed rule change reflects this competitive environment and does not impose any undue burden on intermarket competition.

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

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 Act¹⁸ and Rule 19b-4(f)(6)¹⁹ 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

¹⁷ See supra note 3.

¹⁸ 15 U.S.C. 78s(b)(3)(A).

¹⁹ 17 CFR 240.19b-4(f)(6).

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 does not believe that the proposed rule changes raise any novel or unique substantive issues because it is substantially similar in all material respects to, and consistent with, a similar rule that is currently operative on another competing options exchange.²⁰ The Exchange believes that this proposed rule change, which is essential for competitive purposes and to promote a free and open market for the benefit of investors, does not raise any new, unique or substantive issues from those raised in the NYSE American filing. As such, the Exchange believes that the proposed rule change is essential for competitive purposes and to promote a free and open market for the benefit of investors and traders. Accordingly, the Exchange believes that the proposed rule change is eligible for immediately effective treatment under the Commission's current procedures for processing rule filings.

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. MIAX Pearl has satisfied this requirement. Furthermore, a proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act²¹ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)²² permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange respectfully requests that the Commission waive the 30-day operative delay. Waiver of the operative delay is consistent with the protection of investors and the public interest

²⁰ See supra note 3.

²¹ 17 CFR 240.19b-4(f)(6).

²² 17 CFR 240.19b-4(f)(6).

because it will ensure fair competition among the exchanges by allowing the Exchange to allow options on IPO'd securities to come to market sooner (i.e., at least two business days post-IPO not inclusive of the day of the IPO) without sacrificing investor protection.

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

As discussed above, the Exchange believes that the proposed rule change is substantially similar in all material respects to a proposal submitted by NYSE American that was recently approved by the Commission.²³

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.

²³ See supra note 3.

EXHIBIT 1SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-PEARL-2023-38)

August _____, 2023

Self-Regulatory Organizations: Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by MIAX PEARL LLC to Amend Exchange Rule 402, Criteria for Underlying Securities

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on August ____, 2023, MIAX PEARL LLC (“MIAX Pearl” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend Exchange Rule 402.

The text of the proposed rule change is available on the Exchange’s website at <https://www.miaxglobal.com/markets/us-options/pearl-options/rule-filings>, at MIAX Pearl’s principal office, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange proposes to amend Exchange Rule 402, Criteria for Underlying Securities, to permit an underlying security having a market capitalization of at least \$3 billion based upon the offering price of its initial public offering, to be listed and traded starting on or after the second business day following the initial public offering day. The Exchange is proposing a listing rule change that is substantially similar in all material respects to the proposal approved for NYSE American LLC (“NYSE American”).³ Following discussions with other exchanges and a cross-section of industry participants and in coordination with the Listed Options Market Structure Working Group (“LOMSWG”) (collectively, the “Industry Working Group”), NYSE American filed a proposed rule change,⁴ which was recently approved, to modify the standard for the listing and trading of options on “covered securities” to reduce the time to market. At this time, the Exchange proposes to adopt an identical rule.

Rule 402 sets forth the guidelines to be considered in evaluating for option transactions underlying securities that are “covered securities,” as defined in Section 18(b)(1)(A) of the Securities Act of 1933 (hereinafter “covered security” or “covered securities”).⁵ Currently, the Exchange permits the listing of an option on an underlying covered security that, amongst other

³ See Securities Exchange Act Release No. 98013 (July 27, 2023) 88 FR 50927 (August 2, 2023)(SR-NYSEAMER-2023-27)(Order Granting Approval of a Proposed Rule Change to Amend Rule 915 (Criteria for Underlying Securities) to Accelerate the Listing of Options on Certain IPOs).

⁴ Id.

⁵ Rule 402(a) requires that, for underlying securities to be eligible for option transactions, such securities must be duly registered and be an “NMS stock” as defined in Rule 600 of Regulation NMS under the Act and will be characterized by a substantial number of outstanding shares which are widely held and actively traded. See Rule 402(a)(1) and (2).

things, has a market price of at least \$3.00 per share for the previous three consecutive business days preceding the date on which the Exchange submits a certificate to The Options Clearing Corporation (“OCC”) to list and trade options on the underlying security (the “three-day lookback period”).⁶ Under the current rule, if an initial public offering (“IPO”) occurs on a Monday, the earliest date the Exchange could submit its listing certificate to OCC would be on Thursday, with the market price determined by the closing price over the three-day lookback period from Monday through Wednesday. The option on the IPO’d security would then be eligible for trading on the Exchange on Friday (i.e., within four business days of the IPO inclusive of the day the listing certificate is submitted to OCC).⁷

The Exchange notes that the three-day look back period helps ensure that options on underlying securities may be listed and traded in a timely manner while also allowing time for OCC to accommodate the certification request. However, there are certain large IPOs that issue high-priced securities -- well above the \$3.00 per share threshold -- that would obviate the need for the three-day lookback period. In this regard, the Industry Working Group has recently identified proposed changes to Rule 402(b)(5)(i) that would help options on covered securities that have a market capitalization of at least \$3 billion based upon the offering price of its IPO come to market earlier. The proposed change, which is intended to be harmonized across options exchanges, is designed to provide investors the opportunity to hedge their interest in IPO investments in a shorter amount of time than what is currently permitted.⁸ The Exchange

⁶ See Rule 402(b)(5)(i). The Exchange is not proposing to make any changes to the guidelines for listing securities that are not a “covered security.” See Rule 402(b)(5)(ii).

⁷ See proposed Rule 402(b)(5)(i). The Exchange proposes a non-substantive change to number the existing and proposed criteria for covered securities as (A) and (B) of paragraph (5)(i). See proposed Rule 402(b)(5)(i).

⁸ While the Exchange acknowledges that market participants may utilize options for speculative purposes (in addition to as a hedging tool), the Exchange believes (as set forth below) that its existing surveillance technologies and procedures adequately address potential violations of exchange rules and federal securities laws applicable to trading on the Exchange.

believes that options serve a valuable tool to the trading community and help markets function efficiently by mitigating risk. To that end, the Exchange believes that the absence of options in the early days after an IPO may heighten volatility in the trading of IPO'd securities.

Accordingly, the Exchange proposes to modify Rule 402 to waive the three-day lookback period for covered securities that have a market capitalization of at least \$3 billion based upon the offering price of the IPO of such securities and to allow options on such securities to be listed and traded starting on or after the second business day following the initial public offering day (i.e., not inclusive of the day of the IPO).⁹ NYSE American has stated that it has reviewed trading data for IPO'd securities dating back to 2017 and is unaware of any such security that achieved a market capitalization of \$3 billion based upon the offering price of its IPO that would not have also qualified for listing options based on the three- day lookback requirement. Specifically, NYSE American has determined that 202 of the 1,179 IPOs that took place between January 1, 2017, and October 21, 2022, met the \$3 billion market capitalization/IPO offering price threshold. Options on all 202 of those IPO shares subsequently satisfied the three-day lookback requirement for listing and trading, i.e., none of these large IPOs closed below the \$3.00/share threshold during its first three days of its trading. As such, the Exchange believes the proposed capitalization threshold of \$3 billion based upon the offering price of its IPO is appropriate.

Under the proposed rule, if an IPO for a company with a market capitalization of \$3 billion based upon the offering price of its IPO occurs on a Monday, the Exchange could submit

⁹ The Exchange acknowledges that the Options Listing Procedures Plan ("OLPP") requires that the listing certificate be provided to OCC no earlier than 12:01 a.m. and no later than 11:00 a.m. (Chicago time) on the trading day prior to the day on which trading is to begin. See the OLPP, at p. 3., [available here: https://ncuoccblobdev.blob.core.windows.net/media/theocc/media/clearing-services/services/options_listing_procedures_plan.pdf](https://ncuoccblobdev.blob.core.windows.net/media/theocc/media/clearing-services/services/options_listing_procedures_plan.pdf). The OLPP is a national market system plan that, among other things, sets forth procedures governing the listing of new options series.

its listing certificate to OCC (to list and trade options on the IPO'd security) as soon as all the other requirements for listing are satisfied. If, on Tuesday, all requirements are deemed satisfied, the IPO'd security could then be eligible for trading on the Exchange on Wednesday (i.e., starting on or after the second business day following the IPO day). Thus, the proposal could potentially accelerate the listing of options on IPO'd securities by two days.

The Exchange believes the proposed change would allow options on IPO'd securities to come to market sooner without sacrificing investor protection. The Exchange represents that trading in IPO'd securities -- like all other securities traded on the Exchange -- is subject to surveillances administered by the Exchange and to cross-market surveillances administered by FINRA on behalf of the Exchange. Those surveillances are designed to detect violations of Exchange rules and applicable federal securities laws.¹⁰ The Exchange represents that those surveillances are adequate to reasonably monitor Exchange trading of IPO'd securities in all trading sessions and to reasonably deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.¹¹ As such, the Exchange believes that its existing surveillance technologies and procedures, coupled with NYSE American's findings related to the IPOs reviewed as described herein, adequately address potential concerns regarding possible manipulation or price stability.

Implementation Date

¹⁰ FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

¹¹ See supra note 8.

The Exchange will announce the effective date of the proposed change by Notice distributed to all Members.¹² The Exchange will coordinate the effective date to coincide with the implementation of the proposed change on the other options exchanges.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.¹³ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁴ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

In particular, the Exchange believes the proposed change would facilitate options transactions and would remove impediments to and perfect the mechanism of a free and open market and a national market system, which would, in turn, protect investors and the public interest by providing an avenue for options on IPO'd securities to come to market earlier. The Exchange notes that the three-day look back period helps ensure that options on underlying securities may be listed and traded in a timely manner while also allowing time for OCC to accommodate the certification request. However, there are certain large IPOs that issue high-priced securities -- well above the \$3.00 per share threshold -- that would obviate the need for the

¹² The term "Member" means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed "members" under the Exchange Act. See Exchange Rule 100.

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

three-day lookback period. As noted above, NYSE American has reviewed trading data for IPO'd securities dating back to 2017 and is unaware of an IPO'd security with a market capitalization of \$3 billion or more (based upon the offering price of its IPO) that subsequently would have failed to qualify for listing and trading as options under the three-day lookback requirement. The Exchange believes that the proposed amendment, which would be harmonized across options exchanges, would remove impediments to and perfect the mechanism of a free and open market and a national market system by providing an avenue for investors to hedge their interest in IPO investments in a shorter amount of time than what is currently permitted. The Exchange believes that options serve a valuable tool to the trading community and help markets function efficiently by mitigating risk. To that end, the Exchange believes that the absence of options in the early days after an IPO may heighten volatility to IPO'd securities.¹⁵

Further, as noted herein, the Exchange believes the proposed change would allow options on IPO'd securities to come to market sooner (i.e., at least two business days post-IPO not inclusive of the day of the IPO) without sacrificing investor protection. The Exchange represents that trading in IPO'd securities -- like all other securities traded on the Exchange -- is subject to surveillances administered by the Exchange and to cross-market surveillances administered by FINRA on behalf of the Exchange. Those surveillances are designed to detect violations of Exchange rules and applicable federal securities laws.¹⁶ The Exchange represents that those surveillances are adequate to reasonably monitor Exchange trading of IPO'd securities in all trading sessions and to reasonably deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange, including wrongful efforts to manipulate the prices of those securities in order to bring them in compliance with the \$3.00/share threshold

¹⁵ See supra note 8.

¹⁶ See supra note 10.

for the listing of options. As such, the Exchange believes that its existing surveillance technologies and procedures, coupled with NYSE American's findings related to the IPOs reviewed as described herein, would adequately address potential concerns regarding possible manipulation or price stability.

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 not necessary or appropriate in furtherance of the purposes of the Act. In this regard and as indicated above, the Exchange notes that the rule change is being proposed as a competitive response to a filing submitted by NYSE American that was recently approved by the Commission.¹⁷ The Exchange anticipates that the other options exchanges will adopt substantively similar proposals, such that there would be no burden on intermarket competition from the Exchange's proposal.

Accordingly, the proposed change is not meant to affect competition among the options exchanges. For these reasons, the Exchange believes that the proposed rule change reflects this competitive environment and does not impose any undue burden on intermarket competition.

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

¹⁷ See supra note 3.

Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act¹⁸ and Rule 19b-4(f)(6)¹⁹ 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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-PEARL-2023-38 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.

¹⁸ 15 U.S.C. 78s(b)(3)(A).

¹⁹ 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.

All submissions should refer to file number SR-PEARL-2023-38. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-PEARL-2023-38 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

Sherry R. Haywood,

Assistant Secretary.

²⁰ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

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

MIAX Pearl Options Exchange Rules

Rule 402. Criteria for Underlying Securities

(a) through (b)(4) No Change.

(5) Either:

(i) If the underlying security is a “covered security” as defined under Section 18(b)(1)(A) of the Securities Act of 1933 (the “Securities Act”);[,] (A) the market price per share of the underlying security has been at least \$3.00 for the previous three (3) consecutive business days preceding the date on which the Exchange submits a certificate to the Clearing Corporation for listing and trading, as measured by the closing price reported in the primary market in which the underlying security is traded; however, (B) the requirements set forth in (5)(i)(A) will be waived during the three days following its initial public offering day for an underlying security having a market capitalization of at least \$3 billion based upon the offering price of its initial public offering, and may be listed and traded starting on or after the second business day following the initial public offering day; or

(ii) If the underlying security is not a “covered security,” the market price per share of the underlying security has been at least \$7.50 for the majority of business days during the three (3) calendar months preceding the date of selection, as measured by the lowest closing price reported in any market in which the underlying security traded on each of the subject days.
