

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 24

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

File No. * SR 2023 - * 46

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"/>
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Rule

<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)
<input checked="" type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)
<input type="checkbox"/> 19b-4(f)(3)	<input 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 Section 1)a) of the MIAX Pearl Options Fee Schedule, Exchange Rebates/Fees - Add/Remove Tiered Rebates/Fees, that applies to the MIAX Pearl Market Maker origin, to modify the volume criteria thresholds applicable to Tier 5 and Tier 6.

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 * Katherine Last Name * Comly

Title * AVP, Associate Counsel

E-mail * kcomly@miaxglobal.com

Telephone * (609) 613-1396 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 09/12/2023 (Title *)

By Katherine S. Comly 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.

Katherine S. Comly Date: 2023.09.12 09:44:57 -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-2023-46 - 19b-4.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-2023-46 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-2023-46 - 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 (“Act”)¹ and Rule 19b-4 thereunder,² proposes to amend the MIAX Pearl Options Exchange Fee Schedule (the “Fee Schedule”).

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1, and a copy of the applicable section of the Fee Schedule is attached hereto as Exhibit 5.

(b) Inapplicable.

(c) Inapplicable.

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 MIAX Pearl 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 changes may be directed to Katherine Comly, AVP, Associate Counsel, (609) 613-1396.

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

a. Purpose

The Exchange originally filed this proposal on August 31, 2023 (SR-PEARL-2023-41). On September 12, 2023, the Exchange withdrew SR-PEARL-2023-41 and refiled this proposal.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

The Exchange proposes to amend Section 1)a) of the Fee Schedule, Exchange Rebates/Fees – Add/Remove Tiered Rebates/Fees, that applies to the MIAX Pearl Market Maker³ origin, to modify the volume criteria thresholds applicable to Tier 5 and Tier 6.

Background

The Exchange currently assesses transaction rebates and fees to all market participants which are based upon the total monthly volume executed by the Member⁴ on MIAX Pearl in the relevant, respective origin type (not including Excluded Contracts)⁵ (as the numerator) expressed as a percentage of (divided by) TCV⁶ (as the denominator). In addition, the per contract transaction rebates and fees are applied retroactively to all eligible volume for that origin type once the respective threshold tier (“Tier”) has been reached by the Member. The Exchange

³ “Market Maker” means a Member registered with the Exchange for the purpose of making markets in options contracts traded on the Exchange and that is vested with the rights and responsibilities specified in Chapter VI of Exchange Rules. See the Definitions Section of the Fee Schedule.

⁴ “Member” means an individual or organization that is registered with the Exchange pursuant to Chapter II of the Exchange Rules for purposes of trading on the Exchange as an “Electronic Exchange Member” or “Market Maker.” Members are deemed “members” under the Exchange Act. See the Definitions Section of the Fee Schedule and Exchange Rule 100.

⁵ “Excluded Contracts” means any contracts routed to an away market for execution. See the Definitions Section of the Fee Schedule.

⁶ “TCV” means total consolidated volume calculated as the total national volume in those classes listed on MIAX Pearl for the month for which the fees apply, excluding consolidated volume executed during the period time in which the Exchange experiences an “Exchange System Disruption” (solely in the option classes of the affected Matching Engine (as defined below)). The term “Exchange System Disruption,” which is defined in the Definitions section of the Fee Schedule, means an outage of a Matching Engine or collective Matching Engines for a period of two consecutive hours or more, during trading hours. The term “Matching Engine,” which is also defined in the Definitions section of the Fee Schedule, is a part of the MIAX Pearl electronic system that processes options orders and trades on a symbol-by-symbol basis. Some Matching Engines will process option classes with multiple root symbols, and other Matching Engines may be dedicated to one single option root symbol (for example, options on SPY may be processed by one single Matching Engine that is dedicated only to SPY). A particular root symbol may only be assigned to a single designated Matching Engine. A particular root symbol may not be assigned to multiple Matching Engines. The Exchange believes that it is reasonable and appropriate to select two consecutive hours as the amount of time necessary to constitute an Exchange System Disruption, as two hours equates to approximately 1.4% of available trading time per month. The Exchange notes that the term “Exchange System Disruption” and its meaning have no applicability outside of the Fee Schedule, as it is used solely for purposes of calculating volume for the threshold tiers in the Fee Schedule. See the Definitions Section of the Fee Schedule.

aggregates the volume of Members and their Affiliates.⁷ Members that place resting liquidity, i.e., orders resting on the book of the MIAX Pearl System,⁸ are paid the specified “maker” rebate (each a “Maker”), and Members that execute against resting liquidity are assessed the specified “taker” fee (each a “Taker”). For opening transactions and ABBO⁹ uncrossing transactions, per contract transaction rebates and fees are waived for all market participants. Finally, Members are assessed lower transaction fees and receive lower rebates for order executions in standard option classes in the Penny Interval Program¹⁰ (“Penny Classes”) than for order executions in standard option classes which are not in the Penny Interval Program (“Non-Penny Classes”), where Members are assessed higher transaction fees and receive higher rebates.

Proposal to Amend the Volume Criteria Thresholds in Tier 5 and Tier 6 for the Market Maker Origin

The Exchange proposes to amend the Add/Remove Tiered Rebates/Fees set forth in Section 1)a) of the Fee Schedule that apply to the MIAX Pearl Market Maker origin, to modify the volume criteria thresholds for Tiers 5 and 6. The Market Maker origin currently provides certain volume criteria thresholds in Tier 5 that is based upon the total monthly volume executed in all option classes by a Market Maker on MIAX Pearl as a percent of TCV. Pursuant to the

⁷ “Affiliate” means (i) an affiliate of a Member of at least 75% common ownership between the firms as reflected on each firm’s Form BD, Schedule A, or (ii) the Appointed Market Maker of an Appointed EEM (or, conversely, the Appointed EEM of an Appointed Market Maker). An “Appointed Market Maker” is a MIAX Pearl Market Maker (who does not otherwise have a corporate affiliation based upon common ownership with an EEM) that has been appointed by an EEM and an “Appointed EEM” is an EEM (who does not otherwise have a corporate affiliation based upon common ownership with a MIAX PEARL Market Maker) that has been appointed by a MIAX Pearl Market Maker, pursuant to the process described in the Fee Schedule. See the Definitions Section of the Fee Schedule.

⁸ The term “System” means the automated trading system used by the Exchange for the trading of securities. See Exchange Rule 100.

⁹ “ABBO” means the best bid(s) or offer(s) disseminated by other Eligible Exchanges (defined in Exchange Rule 1400(g) and calculated by the Exchange based on market information received by the Exchange from OPRA. See the Definitions Section of the Fee Schedule and Exchange Rule 100.

¹⁰ See Securities Exchange Act Release No. 88992 (June 2, 2020), 85 FR 35142 (June 8, 2020) (SR-PEARL-2020-06).

Market Maker origin table, Market Makers will qualify for the following Maker rebates and Taker fees in Tier 5 if the Market Maker executes above 1.25% to at least 1.50% of TCV: (i) Maker rebates of (\$0.48), against origins other than Priority Customer in Penny Classes; (ii) Maker rebates of (\$0.45), against the Priority Customer origin in Penny Classes; (iii) Taker fees of \$0.50, against origins other than Priority Customer in Penny Classes; (iv) Taker fees of \$0.50, against the Priority Customer origin in Penny Classes; (v) Maker rebates of (\$0.70), against all origins in Non-Penny Classes; and (vi) Taker fees of \$1.08, against all origins in Non-Penny Classes.

The Market Maker origin currently provides certain volume criteria thresholds in Tier 6 that is based upon the total monthly volume executed in all option classes by a Market Maker on MIAX Pearl as a percent of TCV. Pursuant to the Market Maker origin table, Market Makers will qualify for the following Maker rebates and Taker fees in Tier 6 if the Market Maker executes above 1.50% of TCV: (i) Maker rebates of (\$0.48), against origins other than Priority Customer in Penny Classes; (ii) Maker rebates of (\$0.46), against the Priority Customer origin in Penny Classes; (iii) Taker fees of \$0.50, against origins other than Priority Customer in Penny Classes; (iv) Taker fees of \$0.50, against the Priority Customer origin in Penny Classes; (v) Maker rebates of (\$0.85), against all origins in Non-Penny Classes; and (vi) Taker fees of \$1.07, against all origins in Non-Penny Classes.

The Exchange proposes to reduce the upper threshold for the volume criteria in Tier 5 of the Market Maker origin from 1.50% to 1.40%. Accordingly, with the proposed change, Market Makers will qualify for the following Maker rebates and Taker fees in Tier 5 if the Market Maker executes above 1.25% to at least 1.40% of TCV: (i) Maker rebates of (\$0.48), against origins other than Priority Customer in Penny Classes; (ii) Maker rebates of (\$0.45), against the

Priority Customer origin in Penny Classes; (iii) Taker fees of \$0.50, against origins other than Priority Customer in Penny Classes; (iv) Taker fees of \$0.50, against the Priority Customer origin in Penny Classes; (v) Maker rebates of (\$0.70), against all origins in Non-Penny Classes; and (vi) Taker fees of \$1.08, against all origins in Non-Penny Classes.

The Exchange also proposes to modify the volume criteria threshold for Tier 6 of the Market Maker origin from above 1.50% to now be above 1.40% in light of the proposed change to the volume criteria in Tier 5, above. Accordingly, with the proposed change to the volume criteria in Tier 6, Market Makers will qualify for the following Maker rebates and Taker fees in Tier 6 if the Market Maker executes above 1.40% of TCV: (i) Maker rebates of (\$0.48), against origins other than Priority Customer in Penny Classes; (ii) Maker rebates of (\$0.46), against the Priority Customer origin in Penny Classes; (iii) Taker fees of \$0.50, against origins other than Priority Customer in Penny Classes; (iv) Taker fees of \$0.50, against the Priority Customer origin in Penny Classes; (v) Maker rebates of (\$0.85), against all origins in Non-Penny Classes; and (vi) Taker fees of \$1.07, against all origins in Non-Penny Classes.

The purpose of this proposed change is for business and competitive reasons. With the proposed change, Market Makers should more easily qualify for the higher rebates and lower fees associated with obtaining the volume criteria in Tier 6. The Exchange believes the proposed change would incentivize Market Makers to improve their posted liquidity to the benefit of the entire market, which should increase order flow sent to the Exchange, benefitting all market participants through increased liquidity, tighter markets and order interaction. Additionally, as the amount and type of volume that is executed on the Exchange has shifted since it first established the volume criteria thresholds for Tiers 5 and 6, the Exchange has determined to

level-set this threshold amount so that it is more reflective of the current type and amount of volume executed on the Exchange.

The Exchange has designated these changes to be immediately effective.

b. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act¹¹ in general, and furthers the objectives of Section 6(b)(4) of the Act¹² in that it is an equitable allocation of reasonable dues, fees, and other charges among its Exchange members and issuers and other persons using its facilities.

The Exchange believes its proposal to modify the volume criteria thresholds for Tiers 5 and 6 of the Market Maker origin provides for the equitable allocation of reasonable dues and fees and is not unfairly discriminatory for the following reasons. The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”¹³ There are currently 16 registered options exchanges competing for order flow. Based on publicly available information, and excluding index-based options, no single exchange has more than approximately 13-14% of the market share of executed volume of multiply listed equity and

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(4).

¹³ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

exchange-traded fund (“ETF”) options trades as of August 23, 2023, for the month of August 2023.¹⁴ Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, as of August 23, 2023, the Exchange had a market share of approximately 6.21% of executed volume of multiply-listed equity and ETF options for the month of August 2023.¹⁵

The Exchange believes that the ever-shifting market shares among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, in response to transaction and/or non-transaction fee changes. For example, on February 28, 2019, the Exchange filed with the Commission a proposal to increase Taker fees in certain Tiers for options transactions in certain Penny classes for Priority Customers and decrease Maker rebates in certain Tiers for options transactions in Penny classes for Priority Customers (which fee was to be effective March 1, 2019).¹⁶ The Exchange experienced a decrease in total market share between the months of February and March of 2019, after the fees were in effect. Accordingly, the Exchange believes that the March 1, 2019 fee change may have contributed to the decrease in the Exchange’s market share and, as such, the Exchange believes competitive forces constrain options exchange transaction fees and market participants can shift order flow based on fee changes instituted by the exchanges.

The Exchange believes its proposal to modify the volume criteria thresholds for Tiers 5 and 6 of the Market Maker origin is reasonable, equitable, and not unfairly discriminatory because Market Makers should more easily qualify for the higher Maker rebates and lower Taker

¹⁴ See the “Market Share” section of the Exchange’s website, available at <https://www.miaxglobal.com/> (last visited August 23, 2023).

¹⁵ See *id.*

¹⁶ See Securities Exchange Act Release No. 85304 (March 13, 2019), 84 FR 10144 (March 19, 2019) (SR-PEARL-2019-07).

fees associated with those tiers. The Exchange believes the proposed change is reasonable because it should incentivize Market Makers to increase order flow sent to the Exchange, benefiting all market participants through increased liquidity, tighter markets and order interaction. Additionally, as the amount and type of volume that is executed on the Exchange has shifted since it first established the volume criteria thresholds for Tiers 5 and 6 of the Market Maker origin, the Exchange has determined to level-set this threshold amount so that it is more reflective of the current type and amount of volume executed on the Exchange. The Exchange also believes the proposed change is not unfairly discriminatory because it is designed to encourage Market Makers to increase their order flow to the Exchange in order to qualify for the higher Maker rebates and lower Taker fees in Tier 6, which should benefit all Members by providing greater execution opportunities on the Exchange and contribute to a deeper, more liquid market, to the benefit of all investors and market 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 not necessary or appropriate in furtherance of the purposes of the Act.

Intra-Market Competition

The Exchange believes its proposal to modify the volume criteria thresholds for Tiers 5 and 6 of the Market Maker origin will not impose any burden on intra-market competition because the Exchange believes that it will not place any category of Exchange market participant at a competitive disadvantage because it will apply to all Market Makers equally. The proposal to modify the volume criteria thresholds for Tiers 5 and 6 of the Market Maker origin is intended to improve market quality. The Exchange believes that its proposal will encourage Market Makers to improve market quality by making it easier for Market Makers to achieve higher tiers,

resulting in higher rebates and lower fees, which should result in narrower bid-ask spreads and increased depth of liquidity. This in turn will attract additional order flow to the Exchange, increasing trading opportunities to the benefit of all market participants. Accordingly, the Exchange believes that the proposed changes will continue to attract order flow to the Exchange, thereby encouraging additional volume and liquidity to the benefit of all market participants.

Inter-Market Competition

The Exchange believes its proposal will not impose any burden on inter-market competition because, as described above, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other options exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. The Exchange believes that the proposed rule changes reflect this competitive environment because they modify the Exchange's fees in a manner that encourages market participants to continue to provide liquidity and to send order flow to the Exchange.

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)(ii) of the Act,¹⁷ and Rule 19b-4(f)(2) thereunder¹⁸ the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

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

The proposed rule change is not based on the rules of another exchange or of the Commission.

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. Completed notice of proposed rule change for publication in the Federal Register.
5. Copy of the applicable section of the Fee Schedule.

¹⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁸ 17 CFR 240.19b-4.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-PEARL-2023-46)

September __, 2023

Self-Regulatory Organizations: Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by MIAX PEARL LLC to Amend the MIAX Pearl Options Fee Schedule

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 September _____ 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 the MIAX Pearl Options Fee Schedule (“Fee Schedule”).

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 originally filed this proposal on August 31, 2023 (SR-PEARL-2023-41). On September 12, 2023, the Exchange withdrew SR-PEARL-2023-41 and refiled this proposal. The Exchange proposes to amend Section 1)a) of the Fee Schedule, Exchange Rebates/Fees – Add/Remove Tiered Rebates/Fees, that applies to the MIAX Pearl Market Maker³ origin, to modify the volume criteria thresholds applicable to Tier 5 and Tier 6.

Background

The Exchange currently assesses transaction rebates and fees to all market participants which are based upon the total monthly volume executed by the Member⁴ on MIAX Pearl in the relevant, respective origin type (not including Excluded Contracts)⁵ (as the numerator) expressed as a percentage of (divided by) TCV⁶ (as the denominator). In addition, the per contract

³ “Market Maker” means a Member registered with the Exchange for the purpose of making markets in options contracts traded on the Exchange and that is vested with the rights and responsibilities specified in Chapter VI of Exchange Rules. See the Definitions Section of the Fee Schedule.

⁴ “Member” means an individual or organization that is registered with the Exchange pursuant to Chapter II of the Exchange Rules for purposes of trading on the Exchange as an “Electronic Exchange Member” or “Market Maker.” Members are deemed “members” under the Exchange Act. See the Definitions Section of the Fee Schedule and Exchange Rule 100.

⁵ “Excluded Contracts” means any contracts routed to an away market for execution. See the Definitions Section of the Fee Schedule.

⁶ “TCV” means total consolidated volume calculated as the total national volume in those classes listed on MIAX Pearl for the month for which the fees apply, excluding consolidated volume executed during the period time in which the Exchange experiences an “Exchange System Disruption” (solely in the option classes of the affected Matching Engine (as defined below)). The term “Exchange System Disruption,” which is defined in the Definitions section of the Fee Schedule, means an outage of a Matching Engine or collective Matching Engines for a period of two consecutive hours or more, during trading hours. The term “Matching Engine,” which is also defined in the Definitions section of the Fee Schedule, is a part of the MIAX Pearl electronic system that processes options orders and trades on a symbol-by-symbol basis. Some Matching Engines will process option classes with multiple root symbols, and other Matching Engines may be dedicated to one single option root symbol (for example, options on SPY may be processed by one single Matching Engine that is dedicated only to SPY). A particular root symbol may only be assigned to a single

transaction rebates and fees are applied retroactively to all eligible volume for that origin type once the respective threshold tier (“Tier”) has been reached by the Member. The Exchange aggregates the volume of Members and their Affiliates.⁷ Members that place resting liquidity, i.e., orders resting on the book of the MIAX Pearl System,⁸ are paid the specified “maker” rebate (each a “Maker”), and Members that execute against resting liquidity are assessed the specified “taker” fee (each a “Taker”). For opening transactions and ABBO⁹ uncrossing transactions, per contract transaction rebates and fees are waived for all market participants. Finally, Members are assessed lower transaction fees and receive lower rebates for order executions in standard option classes in the Penny Interval Program¹⁰ (“Penny Classes”) than for order executions in standard option classes which are not in the Penny Interval Program (“Non-Penny Classes”), where Members are assessed higher transaction fees and receive higher rebates.

Proposal to Amend the Volume Criteria Thresholds in Tier 5 and Tier 6 for the Market Maker Origin

designated Matching Engine. A particular root symbol may not be assigned to multiple Matching Engines. The Exchange believes that it is reasonable and appropriate to select two consecutive hours as the amount of time necessary to constitute an Exchange System Disruption, as two hours equates to approximately 1.4% of available trading time per month. The Exchange notes that the term “Exchange System Disruption” and its meaning have no applicability outside of the Fee Schedule, as it is used solely for purposes of calculating volume for the threshold tiers in the Fee Schedule. See the Definitions Section of the Fee Schedule.

⁷ “Affiliate” means (i) an affiliate of a Member of at least 75% common ownership between the firms as reflected on each firm’s Form BD, Schedule A, or (ii) the Appointed Market Maker of an Appointed EEM (or, conversely, the Appointed EEM of an Appointed Market Maker). An “Appointed Market Maker” is a MIAX Pearl Market Maker (who does not otherwise have a corporate affiliation based upon common ownership with an EEM) that has been appointed by an EEM and an “Appointed EEM” is an EEM (who does not otherwise have a corporate affiliation based upon common ownership with a MIAX PEARL Market Maker) that has been appointed by a MIAX Pearl Market Maker, pursuant to the process described in the Fee Schedule. See the Definitions Section of the Fee Schedule.

⁸ The term “System” means the automated trading system used by the Exchange for the trading of securities. See Exchange Rule 100.

⁹ “ABBO” means the best bid(s) or offer(s) disseminated by other Eligible Exchanges (defined in Exchange Rule 1400(g) and calculated by the Exchange based on market information received by the Exchange from OPRA. See the Definitions Section of the Fee Schedule and Exchange Rule 100.

¹⁰ See Securities Exchange Act Release No. 88992 (June 2, 2020), 85 FR 35142 (June 8, 2020) (SR-PEARL-2020-06).

The Exchange proposes to amend the Add/Remove Tiered Rebates/Fees set forth in Section 1)a) of the Fee Schedule that apply to the MIAX Pearl Market Maker origin, to modify the volume criteria thresholds for Tiers 5 and 6. The Market Maker origin currently provides certain volume criteria thresholds in Tier 5 that is based upon the total monthly volume executed in all option classes by a Market Maker on MIAX Pearl as a percent of TCV. Pursuant to the Market Maker origin table, Market Makers will qualify for the following Maker rebates and Taker fees in Tier 5 if the Market Maker executes above 1.25% to at least 1.50% of TCV: (i) Maker rebates of (\$0.48), against origins other than Priority Customer in Penny Classes; (ii) Maker rebates of (\$0.45), against the Priority Customer origin in Penny Classes; (iii) Taker fees of \$0.50, against origins other than Priority Customer in Penny Classes; (iv) Taker fees of \$0.50, against the Priority Customer origin in Penny Classes; (v) Maker rebates of (\$0.70), against all origins in Non-Penny Classes; and (vi) Taker fees of \$1.08, against all origins in Non-Penny Classes.

The Market Maker origin currently provides certain volume criteria thresholds in Tier 6 that is based upon the total monthly volume executed in all option classes by a Market Maker on MIAX Pearl as a percent of TCV. Pursuant to the Market Maker origin table, Market Makers will qualify for the following Maker rebates and Taker fees in Tier 6 if the Market Maker executes above 1.50% of TCV: (i) Maker rebates of (\$0.48), against origins other than Priority Customer in Penny Classes; (ii) Maker rebates of (\$0.46), against the Priority Customer origin in Penny Classes; (iii) Taker fees of \$0.50, against origins other than Priority Customer in Penny Classes; (iv) Taker fees of \$0.50, against the Priority Customer origin in Penny Classes; (v) Maker rebates of (\$0.85), against all origins in Non-Penny Classes; and (vi) Taker fees of \$1.07, against all origins in Non-Penny Classes.

The Exchange proposes to reduce the upper threshold for the volume criteria in Tier 5 of the Market Maker origin from 1.50% to 1.40%. Accordingly, with the proposed change, Market Makers will qualify for the following Maker rebates and Taker fees in Tier 5 if the Market Maker executes above 1.25% to at least 1.40% of TCV: (i) Maker rebates of (\$0.48), against origins other than Priority Customer in Penny Classes; (ii) Maker rebates of (\$0.45), against the Priority Customer origin in Penny Classes; (iii) Taker fees of \$0.50, against origins other than Priority Customer in Penny Classes; (iv) Taker fees of \$0.50, against the Priority Customer origin in Penny Classes; (v) Maker rebates of (\$0.70), against all origins in Non-Penny Classes; and (vi) Taker fees of \$1.08, against all origins in Non-Penny Classes.

The Exchange also proposes to modify the volume criteria threshold for Tier 6 of the Market Maker origin from above 1.50% to now be above 1.40% in light of the proposed change to the volume criteria in Tier 5, above. Accordingly, with the proposed change to the volume criteria in Tier 6, Market Makers will qualify for the following Maker rebates and Taker fees in Tier 6 if the Market Maker executes above 1.40% of TCV: (i) Maker rebates of (\$0.48), against origins other than Priority Customer in Penny Classes; (ii) Maker rebates of (\$0.46), against the Priority Customer origin in Penny Classes; (iii) Taker fees of \$0.50, against origins other than Priority Customer in Penny Classes; (iv) Taker fees of \$0.50, against the Priority Customer origin in Penny Classes; (v) Maker rebates of (\$0.85), against all origins in Non-Penny Classes; and (vi) Taker fees of \$1.07, against all origins in Non-Penny Classes.

The purpose of this proposed change is for business and competitive reasons. With the proposed change, Market Makers should more easily qualify for the higher rebates and lower fees associated with obtaining the volume criteria in Tier 6. The Exchange believes the proposed change would incentivize Market Makers to improve their posted liquidity to the benefit of the entire market, which should increase order flow sent to the Exchange, benefitting all market

participants through increased liquidity, tighter markets and order interaction. Additionally, as the amount and type of volume that is executed on the Exchange has shifted since it first established the volume criteria thresholds for Tiers 5 and 6, the Exchange has determined to level-set this threshold amount so that it is more reflective of the current type and amount of volume executed on the Exchange.

The Exchange has designated these changes to be immediately effective.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act¹¹ in general, and furthers the objectives of Section 6(b)(4) of the Act¹² in that it is an equitable allocation of reasonable dues, fees, and other charges among its Exchange members and issuers and other persons using its facilities.

The Exchange believes its proposal to modify the volume criteria thresholds for Tiers 5 and 6 of the Market Maker origin provides for the equitable allocation of reasonable dues and fees and is not unfairly discriminatory for the following reasons. The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”¹³ There are currently 16 registered options exchanges competing for order flow. Based on publicly available

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(4).

¹³ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

information, and excluding index-based options, no single exchange has more than approximately 13-14% of the market share of executed volume of multiply listed equity and exchange-traded fund (“ETF”) options trades as of August 23, 2023, for the month of August 2023.¹⁴ Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, as of August 23, 2023, the Exchange had a market share of approximately 6.21% of executed volume of multiply-listed equity and ETF options for the month of August 2023.¹⁵

The Exchange believes that the ever-shifting market shares among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, in response to transaction and/or non-transaction fee changes. For example, on February 28, 2019, the Exchange filed with the Commission a proposal to increase Taker fees in certain Tiers for options transactions in certain Penny classes for Priority Customers and decrease Maker rebates in certain Tiers for options transactions in Penny classes for Priority Customers (which fee was to be effective March 1, 2019).¹⁶ The Exchange experienced a decrease in total market share between the months of February and March of 2019, after the fees were in effect. Accordingly, the Exchange believes that the March 1, 2019 fee change may have contributed to the decrease in the Exchange’s market share and, as such, the Exchange believes competitive forces constrain options exchange transaction fees and market participants can shift order flow based on fee changes instituted by the exchanges.

¹⁴ See the “Market Share” section of the Exchange’s website, available at <https://www.miaxglobal.com/> (last visited August 23, 2023).

¹⁵ See *id.*

¹⁶ See Securities Exchange Act Release No. 85304 (March 13, 2019), 84 FR 10144 (March 19, 2019) (SR-PEARL-2019-07).

The Exchange believes its proposal to modify the volume criteria thresholds for Tiers 5 and 6 of the Market Maker origin is reasonable, equitable, and not unfairly discriminatory because Market Makers should more easily qualify for the higher Maker rebates and lower Taker fees associated with those tiers. The Exchange believes the proposed change is reasonable because it should incentivize Market Makers to increase order flow sent to the Exchange, benefiting all market participants through increased liquidity, tighter markets and order interaction. Additionally, as the amount and type of volume that is executed on the Exchange has shifted since it first established the volume criteria thresholds for Tiers 5 and 6 of the Market Maker origin, the Exchange has determined to level-set this threshold amount so that it is more reflective of the current type and amount of volume executed on the Exchange. The Exchange also believes the proposed change is not unfairly discriminatory because it is designed to encourage Market Makers to increase their order flow to the Exchange in order to qualify for the higher Maker rebates and lower Taker fees in Tier 6, which should benefit all Members by providing greater execution opportunities on the Exchange and contribute to a deeper, more liquid market, to the benefit of all investors and market 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 not necessary or appropriate in furtherance of the purposes of the Act.

Intra-Market Competition

The Exchange believes its proposal to modify the volume criteria thresholds for Tiers 5 and 6 of the Market Maker origin will not impose any burden on intra-market competition because the Exchange believes that it will not place any category of Exchange market participant at a competitive disadvantage because it will apply to all Market Makers equally. The proposal to modify the volume criteria thresholds for Tiers 5 and 6 of the Market Maker origin is intended to

improve market quality. The Exchange believes that its proposal will encourage Market Makers to improve market quality by making it easier for Market Makers to achieve higher tiers, resulting in higher rebates and lower fees, which should result in narrower bid-ask spreads and increased depth of liquidity. This in turn will attract additional order flow to the Exchange, increasing trading opportunities to the benefit of all market participants. Accordingly, the Exchange believes that the proposed changes will continue to attract order flow to the Exchange, thereby encouraging additional volume and liquidity to the benefit of all market participants.

Inter-Market Competition

The Exchange believes its proposal will not impose any burden on inter-market competition because, as described above, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other options exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. The Exchange believes that the proposed rule changes reflect this competitive environment because they modify the Exchange's fees in a manner that encourages market participants to continue to provide liquidity and to send order flow to the Exchange.

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

Written comments were neither solicited nor received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,¹⁷ and Rule 19b-4(f)(2)¹⁸ 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-2023-46 on the subject line.

Paper Comments:

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

All submissions should refer to file number SR-PEARL-2023-46. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post

¹⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁸ 17 CFR 240.19b-4(f)(2).

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-2023-46 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.¹⁹

Sherry R. Haywood,

Assistant Secretary.

¹⁹ 17 CFR 200.30-3(a)(12).

Exhibit 5

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

MIAX Pearl Options Exchange Fee Schedule

* * * * *

1) Transaction Rebates/Fees

a) Exchange Rebates/Fees – Add/Remove Tiered Rebates/Fees

* * * * *

Origin	Tier	Volume Criteria	Per Contract Rebates/Fees for Penny Classes				Per Contract Rebates/Fees for Non-Penny Classes	
			Maker (Contra Origins ex Priority Customer)	Maker (Contra Priority Customer Origin)	Taker (Contra Origins ex Priority Customer)	Taker (Contra Priority Customer Origin)	Maker**	Taker**
All MIAX Pearl Market Makers	1	No change.	No change.	No change.	No change.	No change.	No change.	No change.
	2	No change.	No change.	No change.	No change.	No change.	No change.	No change.
	3	No change.	No change.	No change.	No change.	No change.	No change.	No change.
	4	No change.	No change.	No change.	No change.	No change.	No change.	No change.
	5	Above 1.25% - [1.50] <u>1.40</u> %	No change.	No change.	No change.	No change.	No change.	No change.
	6	Above [1.50] <u>1.40</u> %	No change.	No change.	No change.	No change.	No change.	No change.

** No Change.

* * * * *