

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-98826; File No. SR-PEARL-2023-59)

October 30, 2023

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the MIAX Pearl Equities Fee Schedule to Extend the Sunset Period for the Step-Added Liquidity Rebate

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 October 18, 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 fee schedule (the “Fee Schedule”) applicable to MIAX Pearl Equities, an equities trading facility of the Exchange.

The text of the proposed rule change is available on the Exchange’s website at <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 Section 1)f) of the Fee Schedule to modify the expiration month (referred to herein as the “sunset period”) of the required criteria of the Step-Up Added Liquidity Rebate table. This table provides that Equity Members³ who satisfy the required criteria will receive the Step-Up Added Liquidity Rebate (described below). The Exchange originally filed this proposal on October 12, 2023, (SR-PEARL-2023-57). On October 18, 2023, the Exchange withdrew SR-PEARL-2023-57 and resubmitted this proposal.

Background

The Exchange currently provides a standard rebate of (\$0.0024)⁴ per share for executions of orders in securities priced at or above \$1.00 per share that add displayed liquidity to the Exchange. The Exchange also currently offers various volume-based tiers and incentives through which an Equity Member may receive an enhanced rebate for executions of orders that add displayed liquidity to the Exchange by achieving the specified criteria that corresponds to a particular tier/incentive.

In particular, the Exchange adopted a volume based pricing incentive, referred to as the “Step-Up Added Liquidity Rebate,” in which qualifying Equity Members receive an enhanced rebate of (\$0.0031) per share for executions of orders in securities priced at or above \$1.00 per

³ The term “Equity Member” is a Member authorized by the Exchange to transact business on MIAX Pearl Equities. See Exchange Rule 1901.

⁴ Rebates are indicated by parentheses. See the General Notes Section of the Fee Schedule.

share that add displayed liquidity to the Exchange.⁵ The enhanced rebate provided by the Step-Up Added Liquidity Rebate applies to Liquidity Indicator Codes AA (adds liquidity, displayed order, Tape A), AB (adds liquidity, displayed order, Tape B) and AC (adds liquidity, displayed order, Tape C).⁶

On September 27, 2023, the Exchange filed SR-PEARL-2023-50 which amended the baseline month from May 2023 to July 2023 and extended the sunset period from September 29, 2023 to January 31, 2024. These changes were scheduled to become effective on October 1, 2023. However, prior to these changes becoming effective the Exchange filed SR-PEARL-2023-54 which superseded SR-PEARL-2023-50 and reverted the baseline month back to May 2023 and changed the sunset period to November 30, 2023, with an effective implementation date of October 1, 2023. Insofar as Equity Members are concerned, the baseline month has not changed, as it was May 2023 for the month of September and remains May 2023 for the month of October. The only substantive change for Equity Members is the extension of the sunset period from September 2023 to November 2023.

Equity Members qualify for the Step-Up Added Liquidity Rebate by achieving a “Step-Up ADAV as a % of TCV”⁷ of at least 0.03% over the baseline month of May 2023. Average daily added volume (“ADAV”) means average daily added volume calculated as the number of shares added per day and average daily volume (“ADV”) means average daily volume calculated

⁵ See Securities Exchange Act Release No. 95614 (August 26, 2022), 87 FR 53813 (September 1, 2022) (SR-PEARL-2022-33).

⁶ See Fee Schedule, Section 1)b), Liquidity Indicator Codes and Associated Fees.

⁷ The term “Step-Up ADAV as a % of TCV” means ADAV as a percent of TCV in the relevant baseline month subtracted from the current month’s ADAV as a percent of TCV. See the Definitions Section of the Fee Schedule. The Exchange notes that the Step-Up Added Liquidity Rebate does not apply to executions of orders in securities priced below \$1.00 per share or executions of orders that constitute added non-displayed liquidity.

as the number of shares added or removed, combined, per day. ADAV and ADV are calculated on a monthly basis.⁸ Total consolidated volume (“TCV”) means total consolidated volume calculated as the volume in shares reported by all exchanges and reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply.⁹ For example, if an Equity Member had an ADAV as a percent of TCV of 0.01% in May 2023, then that Equity Member has to achieve an ADAV as a percent of TCV equal to or greater than 0.04% in any subsequent month in order to qualify for the Step-Up Added Liquidity Rebate.

Proposal

The Exchange now proposes to amend Section 1)f) of the Fee Schedule to modify the required criteria for Equity Members to receive the Step-Up Added Liquidity Rebate. In particular, the Exchange proposes that the criteria to qualify for the Step-Up Added Liquidity Rebate will expire no later than November 30, 2023.¹⁰ The Exchange will issue an alert to market participants should the Exchange determine that the Step-Up Added Liquidity Rebate will expire earlier than November 30, 2023, or if the Exchange determines to amend the criteria or rate applicable to the Step-Up Added Liquidity Rebate prior to the end of the sunset period. The Exchange notes that at least one other competing equities exchange provides a similar

⁸ The Exchange excludes from its calculation of ADAV and ADV shares added or removed on any day that the Exchange’s system experiences a disruption that lasts for more than 60 minutes during regular trading hours, on any day with a scheduled early market close, and on the “Russell Reconstitution Day” (typically the last Friday in June). Routed shares are not included in the ADAV or ADV calculation. With prior notice to the Exchange, an Equity Member may aggregate ADAV or ADV with other Equity Members that control, are controlled by, or are under common control with such Equity Member (as evidenced on such Equity Member’s Form BD). See the Definitions Section of the Fee Schedule.

⁹ The Exchange excludes from its calculation of TCV volume on any given day that the Exchange’s system experiences a disruption that lasts for more than 60 minutes during Regular Trading Hours, on any day with a scheduled early market close, and on the “Russell Reconstitution Day” (typically the last Friday in June). See the Definitions Section of the Fee Schedule.

¹⁰ The Exchange notes that at the end of the sunset period, the Step-Up Added Liquidity Rebate will no longer apply unless the Exchange files another 19b-4 Filing with the Commission to amend the criteria terms.

“sunset period” for one of its enhanced rebates subject to the same baseline month as the Exchange proposes.¹¹

The Exchange does not propose any other changes to the qualifying criteria for Equity Members to receive the Step-Up Added Liquidity Rebate. The Exchange also does not propose to amend the amount of the enhanced rebate of (\$0.0031) per share for Equity Members that qualify for the Step-Up Added Liquidity Rebate. Finally, the Exchange does not propose to change the baseline ADAV of 0.00% of TCV used for firms that become Equity Members of the Exchange after May 2023 for the purpose of the Step-Up Added Liquidity Rebate calculation.

The purpose of this proposed change is to simply extend the sunset period two months, from September 2023 to November 2023. The Exchange believes that the Step-Up Added Liquidity Rebate will continue to provide an incentive for Equity Members to strive for higher ADAV on the Exchange (above their ADAV in the baseline month of May 2023) to receive the enhanced rebate for qualifying executions of orders in securities priced at or above \$1.00 per share that add displayed liquidity to the Exchange. The Exchange believes that with the extension of the sunset period the Step-Up Added Liquidity Rebate will continue to encourage the submission of additional displayed added liquidity to the Exchange, thereby promoting price discovery and contributing to a deeper and more liquid market, which benefits all market participants and enhances the attractiveness of the Exchange as a trading venue. The Exchange notes that earlier this year, MEMX filed a proposal to use May 2023 as the baseline month for one of its enhanced Liquidity Provision Tiers (Tier 6) for MEMX’s members to receive an

¹¹ See Securities Exchange Act Release No. 97662 (June 7, 2023), 88 FR 38576 (June 13, 2023) (SR-MEMX-2023-09); see also MEMX LLC (“MEMX”) Fee Schedule, Liquidity Provision Tiers, Tier 6, available at <https://info.memxtrading.com/fee-schedule/> (last visited September 29, 2023).

enhanced rebate and used November 30, 2023, as the sunset period.¹² The purpose of including the proposed sunset period in the Fee Schedule is to provide clarity to Equity Members that, unless the Exchange determines to amend or otherwise modify the Step-Up Added Liquidity Rebate, the Step-Up Added Liquidity Rebate will expire at the end of the sunset period.

Implementation

The proposed changes will become immediately effective.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act¹³ in general, and furthers the objectives of Section 6(b)(4) of the Act¹⁴ in particular, in that it is an equitable allocation of reasonable fees and other charges among its Equity Members and issuers and other persons using its facilities and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange operates in a highly fragmented and competitive market in which market participants can readily direct their order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of sixteen registered equities exchanges, and there are a number of alternative trading systems and other off-exchange venues, to which market participants may direct their order flow. As of September 29, 2023, based on publicly available information, no single registered equities exchange currently has more than approximately 15-16% of the total market share of executed volume of equities trading for the month of September 2023.¹⁵ Thus, in such a low-concentrated

¹² See id.

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(4).

¹⁵ See MIAX's "The market at a glance/MTD AVERAGE," available at <https://www.miaxglobal.com/> (Data as of 9/1/2023 – 9/28/2023).

and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow, and the Exchange represents approximately 1.79% of the overall market share as of September 29, 2023, for the month of September 2023.¹⁶ The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and also recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”¹⁷

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

The Exchange notes that volume-based incentives and discounts (such as tiers) have been widely adopted by exchanges (including the Exchange), and believes they are reasonable,

¹⁶ See id.

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

equitable and not unfairly discriminatory because they are available to all Equity Members on an equal basis, provide additional benefits or discounts that are reasonably related to the value of an exchange's market quality associated with higher levels of market activity (such as higher levels of liquidity provision and/or growth patterns), and the introduction of higher volumes of orders into the price and volume discovery process.

The Exchange believes that the Step-Up Added Liquidity Rebate, as modified by the proposed change to the sunset period, is reasonable, equitable and not unfairly discriminatory as the Step-Up Added Liquidity Rebate will continue to be available to all Equity Members on an equal basis, and is reasonably designed to encourage Equity Members to maintain or increase their order flow in liquidity-adding volume. The Exchange believes this will continue to promote price discovery, enhance liquidity and market quality, and contribute to a more robust and well-balanced market ecosystem on the Exchange to the benefit of all Equity Members and market participants. The Exchange also notes that MEMX filed a proposal which also uses May 2023 as the baseline month as well as November 2023 as its expiration month, for one of its enhanced Liquidity Provision Tiers (Tier 6) for its members to receive an enhanced rebate.¹⁸

The Exchange believes it is reasonable, equitable and not unfairly discriminatory to amend the sunset period in the Fee Schedule for the Step-Up Added Liquidity Rebate because it will provide clarity to Equity Members that, unless the Exchange determines to amend or otherwise modify the Step-Up Added Liquidity Rebate, the Step-Up Added Liquidity Rebate will expire at the end of the sunset period. This will allow Equity Members to take into account that the enhanced rebate provided for by the Step-Up Added Liquidity Rebate may be discontinued at the end of sunset period unless the Exchange announces otherwise and files a

¹⁸ See supra note **Error! Bookmark not defined.**

revised proposal with the Commission. The Exchange further notes that it will issue an alert to market participants should the Exchange determine that the Step-Up Added Liquidity Rebate will expire earlier than November 30, 2023, or if the Exchange determines to amend the criteria or rate applicable to the Step-Up Added Liquidity Rebate prior to the end of the sunset period. At least one other competing equities exchange provided a similar sunset period in its fee schedule for one of its enhanced rebates.¹⁹

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

The Exchange believes that the proposed change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition

The Exchange does not believe that the proposal will impose any burden on intramarket competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the Step-Up Added Liquidity Rebate, as modified by this proposal, will continue to incentivize Equity Members to submit additional orders that add liquidity to the Exchange, thereby contributing to a deeper and more liquid market and promoting price discovery and market quality on the Exchange to the benefit of all market participants and enhancing the attractiveness of the Exchange as a trading venue, which the Exchange believes, in turn, would continue to encourage market participants to direct additional order flow to the Exchange. Greater liquidity benefits all Equity Members by providing more trading opportunities and encourages Equity Members to send additional orders to the Exchange, thereby contributing to robust levels of liquidity, which benefits all market participants. As described above, the opportunity to qualify for the proposed new Step-Up Added Liquidity Rebate, and

¹⁹ See id.

thus receive the proposed rebate for qualifying executions of orders in securities priced at or above \$1.00 per share that add displayed volume will continue to be available to all Equity Members that meet the associated volume requirement, and the Exchange believes the proposed extension of the sunset period is reasonably related to the enhanced market quality that the Step-Up Added Liquidity Rebate is designed to promote. As such the Exchange does not believe the proposed changes would impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purpose of the Act.

The Exchange believes its proposal to extend the sunset period in the Fee Schedule for the Step-Up Added Liquidity Rebate will not impose any burden on intramarket competition not necessary or appropriate in furtherance of the purposes of the Act because it will provide clarity to Equity Members that, unless the Exchange determines to amend or otherwise modify the Step-Up Added Liquidity Rebate, the Step-Up Added Liquidity Rebate will be discontinued at the end of the sunset period. This will allow Equity Members to take into account that the enhanced rebate provided for by the Step-Up Added Liquidity Rebate may be discontinued at the end of the sunset period unless the Exchange announces otherwise. The Exchange further notes that it will issue an alert to market participants should the Exchange determine that the Step-Up Added Liquidity Rebate will expire earlier than November 30, 2023, or if the Exchange determines to amend the criteria or rate applicable to the Step-Up Added Liquidity Rebate prior to the end of the sunset period. At least one other competing equities exchange provided a similar sunset period in its fee schedule for one of its enhanced rebates.²⁰

²⁰ See supra note **Error! Bookmark not defined.**

Intermarket Competition

The Exchange believes its proposal will benefit competition, and the Exchange notes that it operates in a highly competitive market. The Exchange notes that by extending its sunset period to November 2023, its program has a sunset period similar to that of at least one other equities exchange.²¹ Equity Members have numerous alternative venues they may participate on and direct their order flow to, including fifteen other equities exchanges and numerous alternative trading systems and other off-exchange venues. As noted above, as of September 29, 2023, based on publicly available information, no single registered equities exchange currently has more than approximately 15-16% of the total market share of executed volume of equities trading for the month of September 2023.²² Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow, and the Exchange represents approximately 1.79% of the overall market share as of September 29, 2023 for the month of September 2023.²³ Moreover, the Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow in response to new or different pricing structures being introduced to the market. Accordingly, competitive forces constrain the Exchange's transaction fees and rebates generally, including with respect to the criteria for Equity Members to achieve the Step-Up Added Liquidity Rebate, and market participants can readily choose to send their orders to other exchanges and off-exchange venues if they deem rebate criteria at those other venues to be more favorable.

²¹ See id.

²² See supra note 15.

²³ See id.

As described above, the proposed changes represent a competitive proposal through which the Exchange is seeking to continue to encourage additional order flow to the Exchange through a volume-based incentive that is comparable to the criteria for volume-based incentives adopted by at least one other competing exchange that has a similar sunset period for a specific enhanced rebate that adds liquidity to that market.²⁴ Accordingly, the Exchange believes that its proposal would not burden, but rather promote, intermarket competition by enabling it to better compete with other exchanges that offer similar pricing incentives to market participants that achieve certain volume criteria and thresholds.

Additionally, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”²⁵ The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. circuit stated: “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a

²⁴ See supra note **Error! Bookmark not defined.**

²⁵ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

monopoly, regulatory or otherwise, in the execution of order flow from broker dealers' ...".²⁶

Accordingly, the Exchange does not believe its proposed pricing changes impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

Written comments were neither solicited nor received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,²⁷ and Rule 19b-4(f)(2)²⁸ 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

²⁶ See NetCoalition v. SEC, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSE-2006-21)).

²⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

²⁸ 17 CFR 240.19b-4(f)(2).

- Send an email to rule-comments@sec.gov. Please include file number SR-PEARL-2023-59 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-2023-59. 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-2023-59 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.²⁹

Sherry R. Haywood,

Assistant Secretary.

²⁹ 17 CFR 200.30-3(a)(12).