

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-83040)

April 12, 2018

Order Granting Application by MIAX PEARL, LLC for Exemption Pursuant to Section 36(a) of the Exchange Act from the Rule Filing Requirements of Section 19(b) of the Exchange Act with Respect to Certain Rules Incorporated by Reference

MIAX PEARL, LLC (“MIAX PEARL” or “Exchange”) has filed with the Securities and Exchange Commission (“Commission”) an application for an exemption under Section 36(a)(1) of the Securities Exchange Act of 1934 (“Exchange Act”)<sup>1</sup> from the rule filing requirements of Section 19(b) of the Exchange Act<sup>2</sup> with respect to certain rules of the Miami International Securities Exchange, LLC (“MIAX Options”<sup>3</sup>) that the Exchange seeks to incorporate by reference. Section 36 of the Exchange Act authorizes the Commission to conditionally or unconditionally exempt any person, security, or transaction, or any class thereof, from any provision of the Exchange Act or rule thereunder, if necessary or appropriate in the public interest and consistent with the protection of investors.

On September 27, 2017, the Commission approved a proposed rule change by MIAX Options to adopt new Chapter XVIII comprising MIAX Options Rules 1801-1812 (“MIAX Options Index Options Rules”), to accommodate the trading of index options by MIAX Options members and establish generic listing standards and maintenance standards to permit MIAX Options to list “broad-based” and “narrow-based” index options pursuant to Rule 19b-4(e) under

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<sup>1</sup> 15 U.S.C. 78mm(a)(1).

<sup>2</sup> 15 U.S.C. 78s(b).

<sup>3</sup> The Commission notes that MIAX PEARL referred to the Miami International Securities Exchange, LLC as “MIAX Options” in its application for an exemption under Section 36(a)(1) of the Exchange Act. See Letter from Dimitriy Kotov, Counsel, MIAX PEARL, to Brent J. Fields, Secretary, Commission, dated March 14, 2018 (“Exemptive Request”). References herein to the rules of MIAX Options are to the rules of the Miami International Securities Exchange, LLC.

the Act.<sup>4</sup> On February 8, 2018, MIAX PEARL filed a proposed rule change with the Commission to incorporate by reference, in new Chapter XVIII of the MIAX PEARL rulebook, the rules contained in MIAX Options Chapter XVIII.<sup>5</sup>

MIAX PEARL has requested, pursuant to Rule 0-12 under the Exchange Act,<sup>6</sup> that the Commission grant the Exchange an exemption from the rule filing requirements of Section 19(b) of the Exchange Act for changes to MIAX PEARL Chapter XVIII that are effected solely by virtue of a change to Chapter XVIII of the MIAX Options rules. Specifically, MIAX PEARL requests that it be permitted to incorporate by reference changes made to each MIAX Options Index Options Rule that is cross-referenced in the MIAX PEARL Chapter XVIII rules,<sup>7</sup> without the need for the Exchange to file separately the same proposed rule changes pursuant to Section 19(b) of the Exchange Act.<sup>8</sup> By virtue of these incorporations by reference, MIAX PEARL members will comply with the MIAX Options Index Options Rules by complying with the MIAX Options rules referenced in the MIAX PEARL Chapter XVIII rules.<sup>9</sup> The Exchange states that the MIAX Options rules the Exchange seeks to incorporate by reference are categories

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<sup>4</sup> See 17 CFR 240.19b-4(e). See also Securities Exchange Act Release No. 81739 (February 2, 2017), 82 FR 46111 (October 3, 2017). The proposed rule change also made related changes to other rules in the MIAX Options rulebook. See *id.*

<sup>5</sup> See Securities Exchange Act Release No. 82756 (February 21, 2018), 83 FR 8538 (February 27, 2018). MIAX PEARL's proposed rule change was approved by the Commission on April 12, 2018. See Securities Exchange Act Release No. 83039.

<sup>6</sup> 17 CFR 240.0-12.

<sup>7</sup> MIAX PEARL Chapter XVIII states “[t]he rules contained in MIAX Options Exchange Chapter XVIII, as such rules may be in effect from time to time (the ‘Chapter XVIII Rules’), are hereby incorporated by reference into this MIAX PEARL Chapter XVIII, and are thus MIAX PEARL Rules and thereby applicable to MIAX PEARL Members.”

<sup>8</sup> See Exemptive Request, *supra* note 3, at 2.

<sup>9</sup> *Id.*

of rules that are regulatory in nature. The Exchange has agreed to provide written notice to its members whenever MIAX Options proposes a change to Chapter XVIII of its Rules.<sup>10</sup>

The Exchange believes this exemption is appropriate in the public interest and consistent with the protection of investors because it will promote more efficient use of the Exchange's and the Commission's resources by avoiding duplicative rule filings based on simultaneous changes to identical rules sought by more than one self-regulatory organization ("SRO"),<sup>11</sup> and because it will result in the Exchange's rules being consistent with the relevant cross-referenced MIAX Options rules.

The Commission has issued exemptions similar to the Exchange's request.<sup>12</sup> In granting one such exemption in 2010, the Commission repeated a prior, 2004 Commission statement that it would consider similar future exemption requests from other SROs, provided that:

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<sup>10</sup> The Exchange states that it will provide such notice on its website in the same section it uses to post its own proposed rule change filings pursuant to Rule 19b-4(l). See 17 CFR 240.19b-4(l). In addition, the Exchange states that its website will also include a link to the MIAX Options website where the proposed rule change filings are located. See Exemptive Request, supra note 3, at 2.

<sup>11</sup> Id.

<sup>12</sup> See, e.g., Securities Exchange Act Release Nos. 76998 (January 29, 2016), 81 FR 6066, 6083-84 (February 4, 2016) (order granting application for registration as a national securities exchange of ISE Mercury, LLC (now known as Nasdaq MRX, LLC) and exemptive request relating to rules of the International Securities Exchange, LLC (now known as Nasdaq ISE, LLC) ("ISE") incorporated by reference, including index options rules); 70050 (July 26, 2013), 78 FR 46622, 46642 (August 1, 2013) (order granting application for registration as a national securities exchange of Topaz Exchange, LLC (now known as Nasdaq GEMX, LLC) and exemptive request relating to rules of ISE incorporated by reference, including index options rules); 61152 (December 10, 2009), 74 FR 66699, 66709-10 (December 16, 2009) (order granting application for registration as a national securities exchange of C2 Options Exchange, Incorporated ("C2") and exemptive request relating to rules of the Chicago Board Options Exchange, Incorporated ("CBOE") incorporated by reference, including index options rules). See also, e.g., Securities Exchange Act Release No. 61534 (February 18, 2010), 75 FR 8760 (February 25, 2010) (order granting BATS Exchange, Inc.'s exemptive request relating to rules incorporated by reference by the BATS Exchange Options Market rules) ("BATS Options Market Order").

- An SRO wishing to incorporate rules of another SRO by reference has submitted a written request for an order exempting it from the requirement in Section 19(b) of the Exchange Act to file proposed rule changes relating to the rules incorporated by reference, has identified the applicable originating SRO(s), together with the rules it wants to incorporate by reference, and otherwise has complied with the procedural requirements set forth in the Commission’s release governing procedures for requesting exemptive orders pursuant to Rule 0-12 under the Exchange Act;<sup>13</sup>

- The incorporating SRO has requested incorporation of categories of rules (rather than individual rules within a category) that are not trading rules (e.g., the SRO has requested incorporation of rules such as margin, suitability, or arbitration); and

- The incorporating SRO has reasonable procedures in place to provide written notice to its members each time a change is proposed to the incorporated rules of another SRO.<sup>14</sup>

The Commission believes that the Exchange has satisfied each of these conditions. The Commission also believes that granting the Exchange an exemption from the rule filing requirements under Section 19(b) of the Exchange Act will promote efficient use of Commission and Exchange resources by avoiding duplicative rule filings based on simultaneous changes to identical rule text sought by more than one SRO.<sup>15</sup> The Commission therefore finds it

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<sup>13</sup> See 17 CFR 240.0-12 and Securities Exchange Act Release No. 39624 (February 5, 1998), 63 FR 8101 (February 18, 1998) (“Commission Procedures for Filing Applications for Orders for Exemptive Relief Pursuant to Section 36 of the Exchange Act; Final Rule”).

<sup>14</sup> See BATS Options Market Order, supra note 12 (citing Securities Exchange Act Release No. 49260 (February 17, 2004), 69 FR 8500 (February 24, 2004) (order granting exemptive request relating to rules incorporated by reference by several SROs) (“2004 Order”).

<sup>15</sup> See BATS Options Market Order, supra note 12, 75 FR at 8761; see also 2004 Order, supra note 14, 69 FR at 8502.

appropriate in the public interest and consistent with the protection of investors to exempt the Exchange from the rule filing requirements under Section 19(b) of the Exchange Act with respect to the above-described rules it has incorporated by reference. This exemption is conditioned upon the Exchange promptly providing written notice to its members whenever MIAX Options changes a rule that the Exchange has incorporated by reference.

Accordingly, IT IS ORDERED, pursuant to Section 36 of the Exchange Act,<sup>16</sup> that the Exchange is exempt from the rule filing requirements of Section 19(b) of the Exchange Act solely with respect to changes to the rules identified in its request that incorporate by reference certain MIAX Options rules that are the result of changes to such MIAX Options' rules, provided that the Exchange promptly provides written notice to its members whenever MIAX Options proposes to change a rule that the Exchange has incorporated by reference.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>16</sup> 15 U.S.C. 78mm.

<sup>17</sup> 17 CFR 200.30-3(a)(76).