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Emily Westerberg Russell
Chief Counsel
Division of Trading and Markets
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Request for a Limited Exemption from Paragraph (a)(2)(i)(A) of Rule 10b-10 Under the Securities Exchange Act of 1934 (the “Act”) and request for No-Action Relief from Rules 10b-10(a)(2), 17a-3(a) and 17a-4(a) under the Act

Dear Ms. Russell:

In connection with the approval of the proposal by MIAX PEARL, LLC (“MIAX PEARL” or the “Exchange”) to adopt rules to govern the trading of equity securities on the Exchange (referred to herein as “MIAX PEARL Equities”) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² the Exchange respectfully requests on behalf of members of the Exchange authorized by the Exchange to transact for their customers in equity securities on MIAX PEARL Equities (“Equity Members”) a limited exemption from the requirement in paragraph (a)(2)(i)(A) of Rule 10b-10³ under the Act to disclose to their customers the name of the person from whom a security was purchased, or to whom it was sold, or the fact that such information will be provided upon the customer’s written request. The Exchange will operate its MIAX PEARL Equities facility as a fully automated electronic System⁴ for orders to buy and sell equity securities (“orders”) with a continuous, automated matching function which will provide for strict price-display-time priority execution (“Trading System”).⁵ The order book

¹ 15 U.S.C. 78s(b)(1). *See* Securities Exchange Act Release No. 89563 (August 14, 2020), 85 FR 51510 (August 20, 2020).

² 17 CFR 240.19b-4.

³ Paragraph (f) of Rule 10b-10 under the Act provides the Securities and Exchange Commission (“SEC” or “Commission”) authority to issue exemptions from the requirements contained in paragraph (a) and (b) of Rule 10b-10.

⁴ See Exchange Rule 100.

⁵ *See* Exchange Rule 2616. The Exchange rules for the trading of equity securities do not provide for any special order type that would be an exception to the strict price-display-time priority handling of orders set forth in Exchange Rule 2616.

and rules applicable to equity trading also provide for post trade anonymity through settlement for trades executed through MIAX PEARL Equities.⁶

MIAX PEARL also requests, on behalf of its Equity Members, your assurance that the staff of the Division of Trading and Markets (“Staff”) will not recommend that the Commission take any enforcement action under paragraph (a) of Rule 10b-10 under the Act in connection with the activities of Equity Members executing orders for their customers in the circumstances described below.

Specifically, MIAX PEARL requests this relief to permit an Equity Member to indicate on a customer confirmation that the Equity Member acted as agent (where the Equity Member submits a customer’s order on MIAX PEARL Equities in the Equity Member’s role as the customer’s agent (hereinafter “Customer Order”)) and the order is executed in a trade with an anonymous contra-party that turns out to be the Equity Member or one of its affiliates trading in a principal (including proprietary) capacity (hereinafter “Principal Order”), so long as the conditions set out below are met and the Equity Member otherwise complies with all other requirements of Rule 10b-10 in confirming the customer’s order, including paragraph(a)(2)(i) thereof.

This request for no-action relief is limited, however, to those situations in which the following requirements are met: (1) the representatives of the Equity Member or its affiliates submitting Principal Orders do not have knowledge about Customer Orders submitted by the Equity Member and the Equity Member representatives submitting Customer Orders do not have knowledge about Principal Orders submitted by the Equity Member or its affiliates (the “No Knowledge Requirement”); and (2) the Equity Member does not determine or influence the selection of the contra-party(ies) against which such Customer Orders will be executed (the “Parity Requirement”).

Finally, MIAX PEARL requests certain no-action relief from the requirements of Rules 17a-3(a)(1) and 17a-4(a) under the Act, as described below.

A. Background — MIAX PEARL

MIAX PEARL is a registered national securities exchange under Section 6 of the Exchange Act.⁷ Members of the Exchange consist of those broker-dealers admitted to Membership and entitled to enter orders in, and receive executions through, the Exchange’s order book or otherwise.

⁶ As explained herein, the Exchange does not request an exemption for when it reveals the identity of a Member or a Member’s clearing firm: (i) for regulatory purposes or to comply with an order of a court or arbitrator; or (ii) when a Qualified Clearing Agency (as defined in Exchange Rule 1901) such as the National Securities Clearing Corporation ceases to act for a Member or the Member’s clearing firm, and determines not to guarantee the settlement of the Member’s trades. *See* Exchange Rule 2620(e)(2).

⁷ MIAX PEARL received approval of its application for registration as a national securities exchange on June 17, 2016. *See* Securities Exchange Act Release No. 79543 (December 13, 2016), 81 FR 92901 (December 20, 2016) (File No. 10-227).

Any Exchange Member who meets certain enumerated qualification requirements may obtain access to MIAX PEARL Equities and become an Equity Member.

MIAX PEARL Equities will operate an order book for orders in equity securities with a continuous, automated matching function, in compliance with the Exchange's rules and Regulation NMS under the Act ("Reg. NMS"). Liquidity will be derived from orders in equity securities to buy and orders to sell submitted to the Exchange electronically by its Equity Members from remote locations.

The order book and the MIAX PEARL rules applicable to MIAX PEARL Equities will provide for strict price-display-time priority execution. Under Rule 2616, orders will be prioritized on a strict price-display-time basis, first by price, then by display (with displayed orders having precedence over non-displayed orders at a given price) and then by time. Incoming and Aggressing orders are first matched for execution against orders in the MIAX PEARL Equities order book.⁸ Orders that cannot be executed are eligible for routing to away trading centers, if consistent with the terms of the orders.⁹ All trades will be executed through MIAX PEARL Equities' Trading System on an anonymous basis. The transaction reports produced by the Trading System will indicate the details of transactions executed in the Trading System but shall not reveal the contra party identities. Transactions executed in the Trading System will also be cleared and settled anonymously.¹⁰

The order book's matching system algorithm permits orders originated by an Equity Member to execute against other orders from the same participant on the same basis as orders from other Equity Members. In the order book's handling of displayed orders, which is based on strict price-display-time priority, an Equity Member could receive an execution against itself, and under MIAX PEARL Rules, the Equity Member would not know that it was the contra-side of the trade at the time of execution.¹¹

B. Rule 10b-10

1. Contra-Party Identity Requirement

Rule 10b-10, among other things, requires a broker-dealer to disclose to its customers the identity of the party the broker-dealer sold to or bought from to fill the customer's order.

⁸ See Exchange Rule 2617(a)(4).

⁹ See Exchange Rule 2617. The Exchange understands that the exemptive and no-action relief would not apply to any situation in which the Trading System routes an order to an away trading center for execution, as such executions would be governed by the rules of the away trading center.

¹⁰ Except for the conditions set forth in Exchange Rule 2620(e)(2). See *supra* note 4.

¹¹ The Exchange provides Equity Members the use of Self-Trade Prevention ("STP") modifiers. See Exchange Rule 2614(f). Any order designated with an STP modifier is prevented from executing against a contra-side order also designated with an STP modifier and originating from the same MPID, Exchange Member identifier, or trade group identifier.

Specifically, under paragraph(i)(A) of Rule 10b-10(a)(2), when a broker-dealer is acting as agent for a customer, some other person, or for both the customer and some other person, the broker-dealer must disclose “[t]he name of the person from whom the security was purchased, or to whom it was sold, for such customer or the fact that the information will be furnished upon written request of such customer” (the “Contra-Party Identity Requirement”). A broker-dealer can provide this information on the confirmation, or it has the option to provide the information to a customer at a later time after receiving a written request from the customer. A broker-dealer has this option as long as it discloses on the confirmation that the contra-party information is available upon written request.

Trades are executed with total anonymity at MIAX PEARL Equities, where the identity of the actual contra-party is not revealed when the trade is executed.¹² Therefore, Equity Members will not know the identity of the party to whom they sold securities or from whom they purchased securities. Without this information, Equity Members cannot comply with the Contra-Party Identity Requirement. To permit Equity Members to utilize the Exchange without violating Rule 10b-10, the Exchange is seeking an exemption, on behalf of such Equity Members, from the Contra-Party Identity Requirement when Equity Members execute transaction at MIAX PEARL Equities.

The Contra-Party Identity Requirement, in conjunction with the other requirements of paragraph (a)(2) of Rule 10b-10, is designed to provide customers with information that could alert them to potential conflicts of interest their broker-dealer may have had when handling their orders.¹³ The Exchange believes an exemption from the Contra-Party Identity Requirement when an Equity Member trades through MIAX PEARL Equities would not diminish the public policy and investor protection objectives of the Contra-Party Identity Requirement of Rule 10b-10. The Exchange believes the potential for a conflict of interest is less likely in those circumstances when an Equity Member trades through MIAX PEARL Equities because the trades are executed at the best price available on MIAX PEARL Equities and the contra-party is determined based upon multiple factors not controlled by the Equity Member. In such situations, Equity Members are not permitted the discretion in executing the order that would normally give rise to the opportunity for a conflict of interest.

2. Identification as Agent on Confirmation

The Exchange requests no-action relief, on behalf of its Equity Members, to permit Equity Members to indicate on a customer confirmation that the Equity Member has acted as agent where the Equity Member submits a customer’s order through the electronic trading facilities of MIAX

¹² *Id.*

¹³ Paragraph (a)(2) of Rule 10b-10 requires a broker-dealer to disclose on a confirmation to a customer the capacity in which the broker-dealer handled the customer’s order (*i.e.*, as agent or principal), and whether the broker-dealer acted as agent for some other person, or as agent for both the customer and some other person. Paragraph (i)(D) of Rule 10b-10(a)(2) requires a broker-dealer to disclose to its customer the source and amount of remuneration received, or to be received, by the broker-dealer in connection with the trade.

PEARL Equities, in the Equity Member's role as the customer's agent, and the order is executed in a trade with an anonymous contra-party that turns out to be the Equity Member or one of its affiliates trading in a principal (including proprietary) capacity.

a. No Knowledge Requirement

This request is limited to those circumstances in which the representatives of an Equity Member and its affiliates submitting Principal Orders do not have knowledge about Customer Orders submitted by the Equity Member, and the Equity Member representatives submitting Customer Orders have no knowledge about Principal Orders submitted by the Equity Member or its affiliates. An Equity Member will be able to satisfy the No Knowledge Requirement if it implements and utilizes an effective system of internal controls such as appropriate information barriers, that operate to prevent the representatives of the Equity Member or its affiliates submitting Principal Orders from obtaining knowledge about the Customer Orders submitted by the Equity Member, and the representative of the Equity Members submitting Customer Orders from obtaining knowledge about the Principal Orders submitted by the Equity Member or its affiliates. To be effective, such a system of internal controls must include specific policies and procedures that prevent each Principal Order submitter separated by the information barriers from obtaining knowledge regarding Customer Orders submitted by the Equity Member, and each Customer Order submitter separated by the information barriers from obtaining knowledge regarding Principal Orders submitted by the Equity Member or its affiliates.

b. Parity Requirement

In addition to this No Knowledge Requirement, this request is limited to those situations in which the Equity Member does not in any way determine or influence the selection of the trading interest against which a customer order will be executed.¹⁴ As stated, MIAX PEARL Equities' order book will not support functionality that would allow a broker-dealer to select or influence against whom its orders will be executed.¹⁵

Where a Customer Order and the Principal Order are executed against each other by the order book, an Equity Member indicating in the confirmation that the firm acted as agent does not

¹⁴ The SEC has issued no-action relief for Rule 10b-10 under these circumstances. *See* Letter from Paula Jenson, Deputy Chief Counsel, Division of Trading and Markets, to Claudia Crowley, Chief Regulatory Officer, IEX Group, Inc. (July 26, 2016); Letter from James L. Eastman, Associate Director and Chief Counsel, Division of Trading and Markets, to Eric Swanson, SVP, General Counsel, BATS Exchange, Inc. (February 25, 2010); Letter from Brian A. Bussey, Assistant Chief Counsel, Division of Market Regulation, to James C. Yong, Chief Regulatory Officer, National Stock Exchange (October 13, 2006); Letter from Brian A. Bussey, Assistant Chief Counsel, Division of Market Regulation, to Edward S. Knight, Executive Vice President and General Counsel, Nasdaq (January 26, 2005); *and* Letter from Brian A. Bussey, Assistant Chief Counsel, Division of Market Regulation, to Aleksandra Radakovic, Vice President, J.P Morgan Securities Inc. (August 4, 2005).

¹⁵ If such functionality were to be offered in the future, MIAX PEARL understands that the relief requested by this letter would not apply to this functionality.

increase the risk of fraud against the customer, where the No Knowledge Requirement and the Parity Requirement are met. To the contrary, the matching of the agency and the proprietary trading interests occurs at the best price available and the contra-side is determined based upon priority factors established by the rules of the Exchange.¹⁶ Moreover, the proposed action does not diminish investor protection because it does not relieve an Equity Member's duty of best execution.¹⁷

C. Books and Record Retention

Rule 17a-3(a)(1) under the Act requires that broker-dealers make and keep current records of all purchases and sales of securities, including "the name or other designation of the person from whom purchased or received or to whom sold or delivered." Rule 17a-4(a) under the Act requires that the records be preserved for six (6) years, the first two (2) years "in an easily accessible place."

The Exchange asks that the Commission staff not recommend enforcement action to the Commission if, in lieu of making and preserving a separate record, a broker-dealer relies on the Exchange's retention of the identities of Equity Members that execute anonymous trades through MIAX PEARL Equities, in the manner consistent with and for the period prescribed in Rule 17a-4 to satisfy requirements of Rules 17a-3(a)(1) and 17a-4 under the Act. A broker-dealer would retain the responsibility to make, keep current and preserve records of all purchase and sales of securities in accordance with Exchange Act Rules 17a-3 and 17a-4 for trades through MIAX PEARL Equities if the broker-dealer knows of the contra-party, including those instances where MIAX PEARL discloses the contra-party to a trade.

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¹⁶ The Exchange expects that same firm volume, *i.e.*, an execution in which a firm's agency order is matched against the same firm's principal (including proprietary) trading interest, as a percentage of total volume in a security through the Trading System will not be material for either high or low trading volume securities. The Exchange represents that one year after the Trading System becomes fully operational, the Exchange will review trade data to determine the actual percentage of same firm volume versus total volume in high and low volume securities to confirm that this number is not material. The Exchange will create and maintain a record of the determination.

¹⁷ See Regulation NMS, Securities Exchange Act Release No. 49325 (February 26, 2004), 69 FR. 11126, 11137 (March 9, 2004) ("A broker-dealer still must seek the most advantageous terms reasonably available under the circumstances for all customer orders. A broker-dealer must carry out a regular and rigorous review of the quality of the market centers to evaluate its best execution policies, including the determination as to which markets it routes customer order flow.")

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In view of the foregoing, the Exchange respectfully requests that the Commission issue an exemption and such other relief as reflected in this letter. If you have any questions, please feel free to contact me at 609-897-8494.

Sincerely,



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VP, Senior Counsel

cc: John Roeser, Associate Director, Division of Trading and Markets, Commission
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