

SECURITIES AND EXCHANGE COMMISSION  
Release No. 34-89942

September 21, 2020

Order Granting Application of MIAX PEARL, LLC for a Limited Exemption from Exchange Act Rule 10b-10(a)(2)(i)(A) pursuant to Rule 10b-10(f)

I. Introduction

By letter dated September 10, 2020 (“the Application”), MIAX PEARL, LLC (“MIAX PEARL” or the “Exchange”) requests a limited exemption from the requirements of Rule 10b-10(a)(2)(i)(A) under the Securities Exchange Act of 1934 (“Exchange Act”) on behalf of Equity Members<sup>1</sup> that execute orders through MIAX PEARL Equities. As discussed in the Application, the Exchange will operate its MIAX PEARL Equities facility as a fully automated electronic System for orders to buy and sell equity securities with a continuous, automated matching function which will provide for strict price-display-time priority execution (“Trading System”).<sup>2</sup> The order book and MIAX PEARL’s rules applicable to equity trading provide for post trade anonymity through settlement for trades executed through MIAX PEARL Equities.<sup>3</sup>

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<sup>1</sup> Unless otherwise defined in this order, defined terms used have the same meaning as described in MIAX PEARL’s Rules.

<sup>2</sup> See MIAX PEARL Rule 2616. MIAX PEARL represents that its rules do not provide for any special order type that would be an exception to the strict price-display-time priority handling of orders as set forth in MIAX PEARL Rule 2616.

<sup>3</sup> As explained in the Application, 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 MIAX PEARL 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 MIAX PEARL Rule 2620(e)(2).

## II. Background<sup>4</sup>

### a. The Exchange

MIAX PEARL is registered as a national securities exchange under Section 6 of the Exchange Act.<sup>5</sup> The 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. 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 Exchange Act.<sup>6</sup> 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 MIAX PEARL 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

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<sup>4</sup> Background information is derived from the Application.

<sup>5</sup> See In the Matter of the Application of: MIAX PEARL, LLC for Registration as a National Securities Exchange; Findings, Opinion, and Order of the Commission, Exchange Act Release No. 79543 (December 13, 2016), 81 FR 92901 (December 20, 2016).

<sup>6</sup> See 17 CFR 242.600 et seq.

matched for execution against orders in the MIAX PEARL Equities order book.<sup>7</sup> Orders that cannot be executed are eligible for routing to away trading centers, if consistent with the terms of the orders.<sup>8</sup> All trades will be executed through the Exchange's 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.<sup>9</sup>

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.<sup>10</sup>

a. Rule 10b-10

Rule 10b-10 under the Exchange Act generally requires broker-dealers effecting a customer transaction in securities (other than U.S. savings bonds or municipal

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<sup>7</sup> See MIAX PEARL Rule 2617(a)(4).

<sup>8</sup> See MIAX PEARL Rule 2617.

<sup>9</sup> Except for the conditions set forth in MIAX PEARL Rule 2620(e)(2). See supra note 3.

<sup>10</sup> The Exchange provides Equity Members the use of Self-Trade Prevention ("STP") modifiers. See MIAX PEARL 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.

securities)<sup>11</sup> to provide a written notification to its customer, at or before completion of a securities transaction, that discloses information specific to the transaction. In particular, under Rule 10b-10(a)(2)(i)(A), when a broker-dealer acts as agent for a customer, for some other person, or for both a 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”).

### III. Relief Sought

As explained in the Application, trades are executed with total anonymity on MIAX PEARL Equities, where the identity of the actual contra-party is not revealed when the trade is executed.<sup>12</sup> Because of this, 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 would not be able to comply with the Contra-Party Identity Requirement of Rule 10b-10. To permit Equity Members to utilize MIAX PEARL Equities without violating Rule 10b-10, on behalf of its Equity Members the Exchange is seeking an exemption under Rule 10b-10(f) from the Contra-Party Identity Requirement of Rule 10b-10 when Equity Members execute transactions on MIAX PEARL Equities, as described in the Application.

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<sup>11</sup> Municipal securities are subject to the transaction confirmations requirements under Rule G-15 of the Municipal Securities Rulemaking Board.

<sup>12</sup> Except for the conditions set forth in MIAX PEARL Rule 2620(e)(2). See supra note 3.

#### IV. Conclusion

Based on the facts and representations contained in the Application, we find that it is appropriate and in the public interest and consistent with the protection of investors to grant the Exchange, on behalf of its Equity Members, a limited exemption from the Contra-Party Identity Requirement in Rule 10b-10(a)(2)(i)(A).

IT IS HEREBY ORDERED, pursuant to Rule 10b-10(f) of the Exchange Act, that Equity Members, based on the representations and facts contained in the Application, are exempt from the requirements of Rule 10b-10(a)(2)(i)(A) of the Exchange Act, to the extent that they execute trades for their customers on the Exchange using the MIAX PEARL Equities Trading System. This exemption is limited to trades that Members execute on MIAX PEARL Equities using the post trade anonymity feature described in the Application.<sup>13</sup>

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<sup>13</sup> This exemption does not apply: (a) to orders routed to an away trading center for execution; (b) under the circumstances described in note 3 supra; or (c) if the functionality of MIAX PEARL Equities' order book were to be changed to allow a broker-dealer to select or influence against whom its orders will be executed as described in the Application on page 6 and note 15.

The foregoing exemption is subject to modification or revocation if at any time the Commission determines that such action is necessary or appropriate in furtherance of the purposes of the Exchange Act.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>14</sup> 17 CFR 200.30-3(32).