

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-97519; File No. SR-PEARL-2023-22)

May 17, 2023

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

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 9, 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 <http://www.miaxoptions.com/rule-filings/pearl> 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

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

the proposed rule change. The text of these statements may be examined at the places specified 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 the Fee Schedule to: (i) reduce the fees for orders in securities priced at or above \$1.00 per share that are routed to the primary listing market’s opening or re-opening process pursuant to the Route to Primary Auction (“PAC”) routing option<sup>3</sup>; and (ii) reduce the fees for orders in securities priced below \$1.00 per share that are routed to the primary listing market’s opening or re-opening process pursuant to the PAC routing option. The Exchange initially filed this proposal on April 28, 2023, with the proposed fee changes effective beginning May 1, 2023 (SR-PEARL-2023-20). On May 9, 2023, the Exchange withdrew SR-PEARL-2023-20 and refiled this proposal as SR-PEARL-2023-22.

Background

The PAC routing option enables an Equity Member<sup>4</sup> to designate that their order be routed to the primary listing market to participate in the primary listing market’s opening, re-opening or closing process.<sup>5</sup> Exchange Rule 2617(b)(5)(B) provides that PAC is a routing option

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<sup>3</sup> See Exchange Rule 2617(b)(5)(B).

<sup>4</sup> The term “Equity Member” is a Member authorized by the Exchange to transact business on MIAX Pearl Equities. See Exchange Rule 1901.

<sup>5</sup> See Exchange Rule 2617(b)(5)(B).

for Market Orders<sup>6</sup> and displayed Limit Orders<sup>7</sup> designated with a time-in-force of Regular Hours Only (“RHO”)<sup>8</sup> that the entering firm wishes to designate for participation in the opening, re-opening (following a regulatory halt, suspension, or pause), or closing process<sup>9</sup> of a primary listing market (Cboe BZX Exchange, Inc. (“Cboe BZX”), the New York Stock Exchange LLC (“NYSE”), The Nasdaq Stock Market LLC (“Nasdaq”), NYSE American LLC (“NYSE American”), or NYSE Arca, Inc. (“NYSE Arca”)), if received before the opening, re-opening, or closing process of such market. For displayed Limit Orders designated with the PAC routing option, any shares that remain unexecuted after attempting to execute in the primary listing market’s opening or re-opening process will either be posted to the MIAX Pearl Equities Book, executed, or routed pursuant to the Price Improvement (“PI”) routing option.<sup>10</sup>

The Exchange adopted the standard liquidity indicator code of “X” in its Fee Schedule for routed liquidity. This code applies to an order that is routed to and executed on an away market. Additionally, this code is used to identify orders that were routed to an away market (including orders that were routed using the PAC routing strategy) and executed as “Taker.”

On July 5, 2022, the Exchange filed its proposal to, among other things, adopt new

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<sup>6</sup> See Exchange Rule 2614(a)(2).

<sup>7</sup> See Exchange Rule 2614(a)(1).

<sup>8</sup> Exchange Rule 2614(b)(2) defines “Regular Hours Only” or “RHO” as “[a]n order that is designated for execution only during Regular Trading Hours, which includes the Opening Process for equity securities. An order with a time-in-force of RHO entered into the System before the opening of business on the Exchange as determined pursuant to Exchange Rule 2600 will be accepted but not eligible for execution until the start of Regular Trading Hours.”

<sup>9</sup> The Exchange notes that it will route Market Orders to the primary listing market’s closing process in certain limited circumstances. See Exchange Rule 2617(b)(5)(B)(1)(ii)(b).

<sup>10</sup> See Exchange Rule 2617(b)(5)(B)(1)(i)(a).

liquidity indicator codes and associated fees and rebates for orders that the Exchange routes pursuant to the PAC routing option.<sup>11</sup> In particular, the Exchange adopted the following liquidity indicator codes and associated fees for orders that the Exchange routes to the primary listing market's opening or re-opening process pursuant to the PAC routing option<sup>12</sup>:

- Liquidity indicator code XC, Routed to NYSE, Opening/Re-Opening Auction. Orders that yield liquidity indicator code XC are charged a fee \$0.00105 per share in securities priced at or above \$1.00 and 0.30% of the transaction's dollar value in securities priced below \$1.00.
- Liquidity indicator code XF, Routed to NYSE Arca, Opening/Re-Opening Auction. Orders that yield liquidity indicator code XF are charged a fee of \$0.00155 per share in securities priced at or above \$1.00 and 0.105% of the transaction's dollar value in securities priced below \$1.00.
- Liquidity indicator code XI, Routed to NYSE American, Opening/Re-Opening Auction. Orders that yield liquidity indicator code XI are charged a fee of \$0.00055 per share in securities priced at or above \$1.00 and 0.055% of the transaction's dollar value in securities priced below \$1.00.
- Liquidity indicator code XL, Routed to Cboe BZX, Opening/Re-Opening Auction. Orders that yield liquidity indicator code XL are charged a fee of \$0.0008 per share in

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<sup>11</sup> See Securities Exchange Act Release No. 95210 (July 7, 2022), 87 FR 41750 (July 13, 2022) (SR-PEARL-2022-26).

<sup>12</sup> The Exchange notes that the proposed changes in this filing will not amend the fees or rebates for the following liquidity indicator codes that also correspond to orders routed away from the Exchange pursuant to the PAC routing option: XA, XB, XD, XE, XG, XH, XJ, XK, XM, XN, XP, XQ. See Fee Schedule, Section 1)b).

securities priced at or above \$1.00 and 0.08% of the transaction's dollar value in securities priced below \$1.00.

- Liquidity indicator code XO, Routed to Nasdaq, Opening/Re-Opening Auction. Orders that yield liquidity indicator code XO are charged a fee of \$0.00155 per share in securities priced at or above \$1.00 and 0.30% of the transaction's dollar value in securities priced below \$1.00.

Proposal to Reduce Fees for Orders in Securities Priced at or above \$1.00 Per Share

The Exchange now proposes to amend Section 1)b) of the Fee Schedule to reduce the fees for orders in securities priced at or above \$1.00 per share that are routed to the primary listing market's opening or re-opening process pursuant to the PAC routing option. Specifically, the Exchange proposes to amend the fees for Liquidity Indicator Codes XC, XF, XI, XL and XO for securities priced at or above \$1.00 per share from the current rates (described above) to now be \$0.00005 per share. With the proposed changes, for securities priced at or above \$1.00 per share: (i) the fee for Liquidity Indicator Code XC will be reduced from \$0.00105 to \$0.00005 per share; (ii) the fee for Liquidity Indicator Code XF will be reduced from \$0.00155 to \$0.00005 per share; (iii) the fee for Liquidity Indicator Code XI will be reduced from \$0.00055 to \$0.00005 per share; (iv) the fee for Liquidity Indicator Code XL will be reduced from \$0.0008 to \$0.00005 per share; and (v) the fee for Liquidity Indicator Code XO will be reduced from \$0.00155 to \$0.00005 per share.

Proposal to Reduce Fees for Orders in Securities Priced Below \$1.00 Per Share

The Exchange also proposes to amend Section 1)b) of the Fee Schedule to reduce the fees for orders in securities priced below \$1.00 per share that are routed to the primary listing market's opening or re-opening process pursuant to the PAC routing option. Specifically, the

Exchange proposes to amend the fees for Liquidity Indicator Codes XC, XF, XI, XL and XO for securities priced below \$1.00 per share from the current rates (described above) to now be 0.00% of the total dollar value of the transaction. With the proposed changes, for securities priced below \$1.00 per share: (i) the fee for Liquidity Indicator Code XC will be reduced from 0.30% to 0.00% of the total dollar value of the transaction; (ii) the fee for Liquidity Indicator Code XF will be reduced from 0.105% to 0.00% of the total dollar value of the transaction; (iii) the fee for Liquidity Indicator Code XI will be reduced from 0.055% to 0.00% of the total dollar value of the transaction; (iv) the fee for Liquidity Indicator Code XL will be reduced from 0.08% to 0.00% of the total dollar value of the transaction; and (v) the fee for Liquidity Indicator Code XO will be reduced from 0.30% to 0.00% of the total dollar value of the transaction.

The purpose of the proposed changes to reduce the fees for all orders that are routed to the primary listing market's opening or re-opening process pursuant to the PAC routing option is for business and competitive reasons. The Exchange initially set such fees higher than, or similar to, the fees charged by competing equities exchanges for routing orders to the primary listing market's opening or re-opening process.<sup>13</sup> The Exchange believes its proposal to reduce fees for all orders routed to the primary listing market's opening or re-opening process pursuant to the PAC routing option will encourage additional orders to be submitted to the Exchange with such designation, which should, in turn improve the Exchange's market quality. The Exchange

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<sup>13</sup> See, e.g., Cboe BZX U.S. Equities Exchange Fee Schedule, Fees Codes and Associated Fees, available at [https://www.cboe.com/us/equities/membership/fee\\_schedule/bzx/](https://www.cboe.com/us/equities/membership/fee_schedule/bzx/) (Cboe BZX fee of \$0.0015 to route orders to a listing market's opening or re-opening cross); NYSE Arca Equities Exchange Fee Schedule, Section V., Standard Rates-Routing, available at [https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE\\_Arca\\_Marketplace\\_Fees.pdf](https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf) (NYSE Arca fee of \$0.001 to route orders to NYSE Auctions; NYSE Arca fee of \$0.003 to route orders to Cboe BZX opening/re-opening auction; NYSE Arca fee of \$0.003 to route orders to Nasdaq auctions).

believes that this will benefit all Equity Members by enhancing the attractiveness of the Exchange as a trading venue.

### Implementation

The proposed changes are immediately effective.

### 2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act<sup>14</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>15</sup> 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.

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. 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.<sup>16</sup> 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 1.64% of the overall market share as of April 27, 2023, for the month

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<sup>14</sup> 15 U.S.C. 78f(b).

<sup>15</sup> 15 U.S.C. 78f(b)(4).

<sup>16</sup> See the “Market Share” Section of the Exchange’s website, available at <https://www.miaxglobal.com/> (last visited April 27, 2023).

of April 2023. 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.”<sup>17</sup>

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 that its proposal to reduce the fees for all orders that are routed to the primary listing market’s opening or re-opening process pursuant to the PAC routing option is reasonable, equitable, and not unfairly discriminatory. The Exchange initially set such fees higher than, or similar to, the fees charged by competing equities exchanges for routing orders to the primary listing market’s opening or re-opening process.<sup>18</sup> The Exchange believes that its proposal to reduce such fees will encourage additional orders designated with the PAC routing option to be submitted to the Exchange, which should, in turn improve the Exchange’s market

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

<sup>18</sup> See supra note 13.



quality. The Exchange believes that this will benefit all Equity Members by enhancing the attractiveness of the Exchange as a trading venue.

The Exchange also believes that the proposed changes are equitable and not unfairly discriminatory as the lower fees would apply to all Equity Members that submit orders designated with the PAC routing option that route to the primary listing market's opening or re-opening process. Further, routing through the Exchange is voluntary and the Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues or providers of routing services if they deem fee levels to be excessive.

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

The Exchange does not believe that the proposed change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed fees are competitive in that they provide lower fees for routing orders pursuant to the PAC routing option to a primary listing market's opening or re-opening process as compared to competing exchanges. The Exchange notes that Equity Members may opt not to select the PAC routing option on orders submitted to the Exchange and accordingly will not incur the associated routing fees proposed herein.

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 proposed fees are available to all similarly situated market participants, and, as such the proposed change would not impose a disparate burden on competition among market participants on the Exchange. Specifically, all Equity Members that use the PAC routing option will be subject to

the same fees and rebates. 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.

#### Intermarket Competition

The Exchange believes its proposal will benefit competition, and the Exchange notes that it operates in a highly competitive market. 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, no single registered equities exchange currently has more than approximately 15-16% of the total market share of executed volume of equities trading.<sup>19</sup> Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. 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, the Exchange believes its proposal would not burden, but rather promote, intermarket competition by enabling it to better compete by providing lower fees than competing exchanges that offer similar routing strategies.

#### 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

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<sup>19</sup> See supra note 16.

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>20</sup> and Rule 19b-4(f)(2)<sup>21</sup> 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 (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-PEARL-2023-22 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-2023-22. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

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<sup>20</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>21</sup> 17 CFR 240.19b-4(f)(2).

comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://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 10:00 a.m. and 3:00 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. The Commission 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-2023-22, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>22</sup>

Sherry R. Haywood  
Assistant Secretary

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<sup>22</sup> 17 CFR 200.30-3(a)(12).