

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-98252; File No. SR-PEARL-2023-39)

August 30, 2023

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Exchange Rule 2614 of the MIAX Pearl Equities Rulebook

Pursuant to 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 August 25, 2023, MIAX PEARL, LLC (“MIAX Pearl” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. 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 proposes to amend the description of Limit Orders under Exchange Rule 2614(a)(1) to provide optional functionality that would cancel displayed Limit Orders³ on the Exchange’s equity trading platform (referred to herein as “MIAX Pearl Equities”) that do not establish a new National Best Bid or Offer (“NBBO”), as described below.

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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Exchange Rule 2614(a)(1) for a description of Limit Orders.

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 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 description of Limit Orders under Exchange Rule 2614(a)(1) to provide optional functionality that cancel a displayed Limit Order to buy (sell) on MIAX Pearl Equities that does not establish a new NBB (NBO), as described herein. The Exchange intends to begin to notify Users⁴ whether their displayed Limit Order established a new NBBO upon entry or when modified via a Cancel/Replace message and such modification causes the order to lose time priority.⁵ This functionality is related to a separate proposal to adopt a fee program to be known as NBBO Setter Plus on September 1, 2023 that would provide

⁴ The term “User” means any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Exchange Rule 2602. See Exchange Rule 1901.

⁵ The Exchange intends to implement this proposed rule change and begin to notify Users whether their displayed Limit Order established a new NBBO upon entry or when modified via a Cancel/Replace message on August 31, 2023 (if waiver of the operative delay is granted) or on the effective date of this filing. See, e.g., MIAX Pearl Equities - Updated Interface Specifications Published for Future Enhancements - New NBBO Setter Flag and Cancellation Feature if Order is Not Setting the NBBO, dated July 26, 2023, available at <https://www.miaxglobal.com/alert/2023/07/26/miax-pearl-equities-updated-interface-specifications-published-future>, and MIAX Pearl Equities - Previously Announced New NBBO Setter Flag and Cancellation Feature will be available on Thursday, August 31, 2023; Corresponding Updated Risk Protections Guide and Order Type Combinations Guide Now on Website, dated August 11, 2023, available at <https://www.miaxglobal.com/alert/2023/08/11/miax-pearl-equities-previously-announced-new-nbbo-setter-flag-and>. This functionality is limited to displayed Limit Orders because that is the only order type offered by the Exchange that may establish a new NBBO.

an enhanced rebate to those displayed Limit Orders that establish the NBBO.⁶ Users that are notified that their displayed Limit Order or modification of such order did not establish a new NBBO may then submit a new displayed Limit Order in an attempt to then establish a new NBBO and qualify for the upcoming NBBO Setter Plus program.

In connection with the above initiatives, Users requested the ability to instruct the Exchange to cancel their displayed Limit Order where it does not establish a new NBBO. Therefore, the Exchange proposes to allow Users to instruct the Exchange, on an order-by-order basis, to cancel their displayed Limit Order to buy (sell) when that order does not establish a new NBB (NBO) upon entry or when modified via a Cancel/Replace message in accordance with Exchange Rule 2614(e) and such modification results in the order losing time priority in accordance with Exchange Rule 2616(a)(5). The proposed functionality would be set forth under Exchange Rule 2614(a)(1)(J). For the avoidance of doubt, the default behavior would be for the Exchange to not cancel the order under this proposal, unless otherwise instructed to do so upon entry on an order-by-order basis.

The following example illustrates the proposed functionality upon entry. Assume the NBBO is \$10.00 by \$10.05. A User submits a displayed Limit Order to buy with a limit price of \$10.01 and instructs the Exchange to cancel such order should it not establish a new NBB. The order does establish a new NBB upon entry and is posted to the MIAX Pearl Equities Book,⁷

⁶ The Exchange intends to submit a separate filing with the Commission for immediate effectiveness pursuant to Section 19(b)(1) of the Exchange Act and Rule 19b-4(f)(2) thereunder a proposal to establish the NBBO Setter Plus Program. The Exchange notes that other exchanges have adopted similar programs. See Securities Exchange Act Release Nos. 95124 (June 17, 2022) 87 FR 37894 (June 24, 2022) (SR-CboeBZX-2022-034); 14923 (March 10, 2022) 87 FR 14923 (March 16, 2022) (SR-MEMX-2022-01); 68209 (November 9, 2012) 77 FR 69519 (November 19, 2012) (SR-NASDAQ-2012-126); and 89754 (September 2, 2020), 85 FR 55550 (September 8, 2020) (SR-NYSE-2020-71).

⁷ The term “MIAX Pearl Equities Book” means the electronic book of orders in equity securities maintained by the System. See Exchange Rule 1901.

resulting in a new NBBO of \$10.01 by \$10.05. However, such order would have been cancelled by the Exchange if its limit price was \$10.00 or lower.

The Exchange also proposes to allow Users to instruct the Exchange to cancel a displayed Limit Order when that order does not establish a new NBB (NBO) after being modified via a Cancel/Replace message in accordance with Exchange Rule 2614(e) and such modification results in the order losing time priority in accordance with Exchange Rule 2616(a)(5). In sum, Exchange Rule 2614(e) provides that only the price, sell long, sell short, or short exempt indicator, and size terms of the order may be changed by a Cancel/Replace Message. Exchange Rule 2616(a)(5) provides that in the event an order has been modified via a Cancel/Replace message in accordance with Exchange Rule 2614(e) above, such order only retains its timestamp if such modification involves a decrease in the size of the order, a change to the Max Floor of an order with a Reserve Quantity, or when a Short Sale Period, as defined in Exchange Rule 2614(g)(3)(A), is not in effect, a change in position from (A) sell to sell short; (B) sell to sell short exempt; (C) sell short to sell; (D) sell short to sell short exempt; (E) sell short exempt to sell; and (F) sell short exempt to sell short.⁸ Any other modification to an order, including an increase in the size of the order and/or price change, will result in such order losing time priority as compared to other orders in the MIAX Pearl Equities Book and the timestamp for such order being revised to reflect the time of the modification.

The following illustrates how the order from the above example would be handled if later modified via a Cancel/Replace message that results in a loss in time priority. As illustrated in the above example, the displayed Limit Order to buy established a new NBBO of \$10.01 by \$10.05

⁸ See, e.g., Securities Exchange Act Release No. 93506 (November 2, 2021), 86 FR 61796 (November 8, 2021) (SR-PEARL-2021-35).

upon entry and now continues to rest on the MIAX Pearl Equities Book at \$10.01. Assume the away BBO is \$10.00 by \$10.05 and a User submit a Cancel/Replace message to change the order's limit price to \$9.99. This would result in the away BBO of \$10.00 by \$10.05 becoming the new NBBO. The displayed Limit Order resting on the MIAX Pearl Equities Book would, therefore, be cancelled because its price is inferior to the new NBB of \$10.00 and would no longer set the NBB.⁹

Users would need to instruct the Exchange upon entry on an order-by-order basis to cancel their order as proposed herein. The proposed functionality would be entirely optional and, absent an instruction from the User on entry to the contrary, a displayed Limit Order that does not establish a new NBBO as described above would not be cancelled by the Exchange. Users may choose to use the proposed functionality based on their own business needs and trading behavior.

All Users would be notified that their displayed Limit Order or modification to such order did not establish a new NBBO, regardless of whether a User instructs the Exchange to cancel a displayed Limit Order when it does not establish a new NBBO as described herein. Users that do not inform the Exchange upon entry to cancel such order may choose to cancel that order on their own and submit a new order in an attempt to then establish a new NBBO and qualify for the upcoming NBBO Setter Plus program.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange,

⁹ However, such order would not have been cancelled by the Exchange if its new limit price was \$10.02.

and, in particular, with the requirements of Section 6(b) of the Act.¹⁰ Specifically, the proposal is consistent with Section 6(b)(5) of the Act¹¹ because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest because it would provide Users optional functionality to assist them in managing their order flow and attempts to establish a new NBBO. The proposal further remove impediments to, and perfect the mechanism of, a free and open market and a national market system because Users may instruct the Exchange upon entry to cancel their displayed Limit Order or modification to such order that did not establish a new NBBO so that they may then submit a new order to again attempt to establish a new NBBO and qualify for the upcoming NBBO Setter Plus program. The proposal would also promote just and equitable principles of trade because it would facilitate a User's ability to enter orders that establish a new NBBO by enabling them to enter a new order in a timelier manner and not submit a separate cancellation message prior to entering the new order. The proposed optional functionality should encourage more aggressively priced displayed liquidity on the Exchange, thereby, improving price discovery and potentially attracting additional contra-side order flow.

As stated above, the proposed functionality would be entirely optional and, absent an instruction from the User to the contrary, a displayed Limit Order that does not establish a new NBBO as described above would not be cancelled by the Exchange. Users may choose to not use the proposed functionality and make their own decision whether to cancel the order on their own based on their business needs and trading behavior.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

Lastly, the exchange notes that at least one other exchange that currently offers a similar NBBO Setter Plus program also provides for the ability to instruct the exchange to cancel an order if it does not establish the NBBO.¹²

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

The Exchange does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The proposed rule change would not have any impact on intramarket competition because it would be available to all Users and Users may choose to use the proposed functionality based on their own business needs or trading behavior. The proposal may enhance intermarket competition because it would allow the Exchange to better compete with at least one other exchange that currently offers the ability to instruct the exchange to cancel an order if it does not establish the NBBO as part of its own NBBO Setter Plus program.¹³ The proposal may also improve the Exchange's competitive position by encouraging the entry of displayed orders priced more aggressively than the NBBO, improving the Exchange's market quality, and attracting additional liquidity. The proposal responds to the current competitive environment where order flow providers have a choice of where to direct liquidity-providing orders by providing optional functionality to facilitate the entry of aggressively priced displayed liquidity on the Exchange.

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

¹² See reason code 240 on page 110 of the NYSE Pillar Gateway Binary Protocol Specifications, dated June 27, 2023, available at NYSE Pillar Gateway Binary Protocol Specification.pdf. See also Securities Exchange Act Release No. 89754 (September 2, 2020), 85 FR 55550 (September 8, 2020) (SR-NYSE-2020-71). Functionality to cancel the order if it does not set the NBBO was not included in SR-NYSE-2020-71.

¹³ Id.

Written comments were neither solicited nor received.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁴ and Rule 19b-4(f)(6) thereunder.¹⁵

A proposed rule change filed under Rule 19b-4(f)(6)¹⁶ normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b-4(f)(6)(iii)¹⁷ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that this proposal provides Users optional functionality to manage their order flow and is designed to facilitate their ability to enter aggressively priced displayed Limit Orders that establish a new NBBO. The Exchange represents that a waiver of the operative delay would permit the Exchange to offer the proposed cancellation and connected NBBO notification functionality by September 1, 2023, the date that it intends to begin to offer an NBBO Setter Plus program and allow it to better compete with other exchanges that offer similar programs and functionality. The Commission believes that waiver of the 30-day operative delay is consistent

¹⁴ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁵ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires the Exchange to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹⁶ Id.

¹⁷ 17 CFR 240.19b-4(f)(6)(iii).

with the protection of investors and the public interest because the proposed functionality is optional and could encourage more aggressively priced displayed liquidity on the Exchange. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.¹⁸

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
- Send an email to rule-comments@sec.gov. Please include file number SR-PEARL-2023-39 on the subject line.

¹⁸ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2023-39. 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-2023-39 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.¹⁹

Sherry R. Haywood,

Assistant Secretary.

¹⁹ 17 CFR 200.30-3(a)(12).