

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-80338)

March 29, 2017

Order Granting Application by MIAX PEARL, LLC for an 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”)¹ from the rule filing requirements of Section 19(b) of the Exchange Act² with respect to certain rules of the Miami International Securities Exchange, LLC (“MIAX Options”³) 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.

Both MIAX PEARL and MIAX Options are Participants in the National Market System Plan Governing the Consolidated Audit Trail (“CAT NMS Plan” or “Plan”).⁴ Each Participant in the CAT NMS Plan is required to enforce compliance by its members with the provisions of

¹ 15 U.S.C. 78mm(a)(1).

² 15 U.S.C. 78s(b).

³ 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 Deborah L. Carroll, Associate General Counsel, MIAX PEARL, to Brent J. Fields, Secretary, Commission, dated February 17, 2017 (“Exemptive Request”). References herein to the rules of MIAX Options are to the rules of the Miami International Securities Exchange, LLC.

⁴ See Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696 (November 23, 2016) (“CAT NMS Plan Approval Order”). All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the CAT NMS Plan or CAT NMS Plan Approval Order.

the Plan by adopting a “Compliance Rule” applicable to its members.⁵ On January 30, 2017, MIAX Options filed a proposed rule change with the Commission to adopt new Chapter XVII comprising MIAX Options Rules 1701-1712 (“MIAX Options Compliance Rule”).⁶ On February 1, 2017, MIAX PEARL filed a proposed rule change with the Commission to incorporate by reference, in new Chapter XVII of the MIAX PEARL rulebook, the rules contained in MIAX Options Chapter XVII.⁷

MIAX PEARL has requested, pursuant to Rule 0-12 under the Exchange Act,⁸ 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 XVII that are effected solely by virtue of a change to Chapter XVII of the MIAX Options rules. Specifically, MIAX PEARL requests that it be permitted to incorporate by reference changes made to each MIAX Options Compliance Rule that is cross-referenced in the MIAX PEARL Chapter XVII rules,⁹ without the need for the Exchange to file separately the same proposed rule changes pursuant to Section 19(b) of the Exchange Act.¹⁰ By virtue of these incorporations by reference, MIAX PEARL members will comply with the Compliance Rule by complying with the MIAX Options rules

⁵ Id. at 84945, 84950.

⁶ See Securities Exchange Act Release No. 79937 (February 2, 2017), 82 FR 9790 (February 8, 2017).

⁷ See Securities Exchange Act Release No. 79938 (February 2, 2017), 82 FR 9929 (February 8, 2017). MIAX PEARL and MIAX Options’ proposed rule changes were approved by the Commission on March 15, 2017. See Securities Exchange Act Release No. 80256, 82 FR 14526 (March 21, 2017).

⁸ 17 CFR 240.0-12.

⁹ MIAX PEARL Chapter XVII states “the rules contained in MIAX Options Exchange Chapter XVII, as such rules may be in effect from time to time (the ‘Chapter XVII Rules’), are hereby incorporated by reference into this MIAX PEARL Chapter XVII, and are thus MIAX PEARL Rules and thereby applicable to MIAX PEARL Members.”

¹⁰ See Exemptive Request, supra note 3, at 2–3.

referenced in the MIAX PEARL Chapter XVII rules.¹¹ MIAX PEARL does not intend to incorporate by reference any trading rules. The Exchange states that in each instance, the Exchange proposes to incorporate by reference categories of rules (rather than individual rules within a category) that are regulatory rules. MIAX PEARL will, as a condition of this exemption, provide written notice to its members whenever MIAX Options proposes a change to Chapter XVII of its rules.¹² Such notice will alert MIAX PEARL members to the proposed rule change and give them an opportunity to comment on the proposal. MIAX PEARL states that it will also inform members in writing when the Commission approves any such proposed changes.¹³

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"),¹⁴ and because it will result in the Exchange's rules being consistent with the relevant cross-referenced MIAX Options rules at all times, thus ensuring identical regulation of joint members of MIAX PEARL and MIAX Options with respect to the incorporated rules.¹⁵ The Exchange believes that, without such an exemption, joint members could be subject to two different standards.¹⁶

¹¹ Id. at 3.

¹² 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(1). 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. Id.

¹³ Id.

¹⁴ Id.

¹⁵ Id.

¹⁶ Id.

The Commission has issued exemptions similar to the Exchange's request.¹⁷ 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:

- 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;¹⁸

- 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

¹⁷ See, e.g., Securities Exchange Act Release Nos. 72650 (July 22, 2014), 79 FR 44075 (July 29, 2014) (order granting exemptive requests from NASDAQ OMX BX, Inc. and the NASDAQ Stock Market LLC relating to rules of NASDAQ OMX PHLX LLC incorporated by reference); 67256 (June 26, 2012), 77 FR 39277, 39286 (July 2, 2012) (order approving SR-BX-2012-030 and granting exemptive request relating to rules incorporated by reference by the BX Options rules); 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"); 67256 (June 26, 2012), 77 FR 39277, 39286 (July 2, 2012) (order approving SR-BX-2012-030 and granting exemptive request relating to rules incorporated by reference by the BX Options rules); and 57478 (March 12, 2008), 73 FR 14521, 14539-40 (March 18, 2008) (order approving SR-NASDAQ-2007-004 and SR-NASDAQ-2007-080, and granting exemptive request relating to rules incorporated by reference by The NASDAQ Options Market).

¹⁸ 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").

- 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.¹⁹

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.²⁰ The Commission therefore finds it 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.

¹⁹ See BATS Options Market Order, supra note 17 (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”).

²⁰ See BATS Options Market Order, supra note 17, 75 FR at 8761; see also 2004 Order, supra note 19, 69 FR at 8502.

Accordingly, IT IS ORDERED, pursuant to Section 36 of the Exchange Act,²¹ 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.²²

Eduardo A. Aleman
Assistant Secretary

²¹ 15 U.S.C. 78mm.

²² 17 CFR 200.30-3(a)(76).