

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-80401; File No. SR-PEARL-2017-17)

April 7, 2017

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

Pursuant to the provisions of 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 April 6, 2017, 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 MIAX PEARL Fee Schedule (the “Fee Schedule”) to waive transaction rebates/fees applicable to transactions executed during the opening and transactions that uncross the Away Best Bid or Offer (“ABBO”).

The Exchange initially filed the proposal on March 29, 2017 (SR-PEARL-2017-13). That filing has been withdrawn and replaced with the current filing (SR-PEARL-2017-17).

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.

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 purpose of this proposed rule change is to waive transaction rebates/fees applicable to executions that occur as part of the Exchange’s opening procedures as described in Rule 503 (“Openings on the Exchange”) or that uncross the ABBO,³ as described in Rule 515 (“Execution of Orders”).

Under the Openings on the Exchange Rule, the Exchange will accept orders for queuing in a series of options prior to the opening of trading in that series of options. As such and as further described in Rule 503, executions might occur in a series as part of the Exchange Opening as the series is being opened for trading. Pursuant to Section 1)a) of the Exchange’s Fee Schedule, the Exchange currently assesses transaction rebates and fees for transactions that occur as part of the Exchange Opening. In order to determine the applicable transaction rebate and fee, the Exchange treats orders from Priority Customer⁴ origin type as a “Maker,” and treats

³ See MIAX PEARL Rule 100.

⁴ The term “Priority Customer” is defined in Exchange Rule 100 to mean a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial

orders from all origin types other than Priority Customer (i.e., MIAX PEARL Market Maker⁵ and Non-Priority Customer, Firm, BD and Non-MIAX PEARL Market Maker)⁶ as a “Taker.”

The Exchange now proposes that, for executions occurring as part of the Exchange Opening, the Exchange will neither charge a fee nor provide a rebate, regardless of origin type.

Further, pursuant to Section 1)a) of the Exchange’s Fee Schedule, the Exchange currently assesses transaction rebates and fees for transactions that uncross the ABBO. In order to determine the applicable transaction rebate and fee, the Exchange treats orders from Priority Customer origin type as a “Maker,” and treats orders from all origin types other than Priority Customer as a “Taker.” The Exchange now proposes that, for executions occurring in such scenario, the Exchange will neither charge a fee nor provide a rebate, regardless of origin type.

The Exchange has determined to make these changes for competitive reasons in order to attract more order flow to the Exchange in these scenarios. The Exchange notes that other exchanges do not assess transaction rebates/fees in these scenarios, including Bats BZX Exchange.⁷ The Exchange notes that any contracts executed as a result of such transactions will continue to be counted for purposes of determining the volume criteria and TCV⁸ for purposes of calculating tiered rebates and fees.

accounts(s). The number of orders is counted in accordance with Rule 100 Interpretation and Policy .01.

⁵ The term “Market Maker” is defined in Exchange Rule 100 to mean a Member registered with the Exchange for the purpose of making markets in options contracts traded on the Exchange and that is vested with the rights and responsibilities specified in Chapter VI of the Exchange’s Rules.

⁶ See MIAX PEARL Fee Schedule, Section 1)a).

⁷ See Securities Exchange Act Release No. 71746 (March 19, 2014), 79 FR 16412 (March 25, 2014) (SR-BATS-2014-006).

⁸ TCV means total consolidated volume calculated as the total national volume in those classes listed on MIAX PEARL for the month for which the fees apply, excluding consolidated volume executed during the period time in which the Exchange experiences

2. Statutory Basis

The Exchange believes that its proposal to amend its fee schedule is consistent with Section 6(b) of the Act⁹ in general, and furthers the objectives of Section 6(b)(4) of the Act¹⁰ in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The proposal provides that executions that occur as part of the Exchange Opening will not incur any fees or receive any rebates, regardless of origin type. The Exchange believes that its proposal to waive transaction rebates/fees that occur as part of the Exchange Opening is reasonable, fair and equitable because it will incentivize Members¹¹ to send greater order flow to the Exchange in this scenario, potentially providing greater liquidity on the Exchange. In addition, the Exchange believes that the foregoing is fair and equitable because it provides certainty for Members with respect to execution costs across all trades occurring as part of the Exchange Opening. Lastly, the Exchange also believes that the proposed pricing for executions

an outage of a Matching Engine or collective Matching Engines for a period of two consecutive hours or more, during trading hours (solely in the option classes of the affected Matching Engine). See Fee Schedule Definitions.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4) and (5).

¹¹ “Member” means an individual or organization that is registered with the Exchange pursuant to Chapter II of the Exchange Rules for purposes of trading on the Exchange as an “Electronic Exchange Member” or “Market Maker.” Members are deemed “members” under the Exchange Act. See MIAx PEARL Rule 100.

occurring as part of the Opening on the Exchange is nondiscriminatory because it will apply equally to all Members, regardless of origin type.

The proposal further provides that executions that uncross the ABBO will not be assessed any fees or receive any rebates, regardless of origin type. The Exchange believes that its proposal to waive transaction rebates/fees that uncross the ABBO is reasonable, fair and equitable because it will incentivize Members to send greater order flow to the Exchange in this scenario, potentially providing greater liquidity on the Exchange. In addition, the Exchange believes that the foregoing is fair and equitable because it provides certainty for Members with respect to execution costs across all trades which uncross the ABBO. Lastly, the Exchange also believes that the proposed pricing for executions occurring in this scenario is nondiscriminatory because it will apply equally to all Members, regardless of origin type.

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

MIAX PEARL does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange notes that this rule change is being proposed as a competitive offering at a time when other options exchanges are offering similar processes for opening their respective markets or managed interest processes. As a result of the competitive environment, Members will have various pricing and execution models to choose from in making determinations on where to enter orders prior to the opening of trading or which may potentially uncross the ABBO. The Exchange notes that it operates in a highly competitive market in which Members can readily direct order flow to competing venues if they deem fee levels to be excessive.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,¹² and Rule 19b-4(f)(2)¹³ 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. Please include File Number SR-PEARL-2017-17 on the subject line.

Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-PEARL-2017-17. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

¹² 15 U.S.C. 78s(b)(3)(A)(ii).

¹³ 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 such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer

to File Number SR-PEARL-2017-17, 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.¹⁴

Eduardo A. Aleman
Assistant Secretary

¹⁴ 17 CFR 200.30-3(a)(12).