

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-90591; File No. SR-PEARL-2020-34)

December 8, 2020

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Equities 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 December 4, 2020, 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 applicable for MIAX PEARL Equities, an equities trading facility of the Exchange (the “Fee Schedule”).³ The proposed changes are scheduled to become operative on December 4, 2020.

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 1901.

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 the proposed rule change is to amend the Fee Schedule applicable to MIAX PEARL Equities to amend pricing for securities priced below \$1.00 that are executed on MIAX PEARL Equities.

The Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or rebates/incentives to be insufficient. More specifically, the Exchange is only one of several equities venues (including both registered exchanges and various alternative trading systems) to which market participants may direct their order flow and execute their trades. Indeed, equity trading is currently dispersed across 16 exchanges,⁴ 31 alternative trading systems,⁵ and numerous broker-dealer internalizers and wholesalers, all competing for order

⁴ See Cboe Global Markets, U.S. Equities Market Volume Summary, available at https://markets.cboe.com/us/equities/market_share/.

⁵ See FINRA ATS Transparency Data, available at <https://otctransparency.finra.org/otctransparency/AtsIssueData>. A list of alternative trading systems registered with the Commission is available at <https://www.sec.gov/foia/docs/atlist.htm>.

flow. Based on publicly available information, no single registered equities exchange currently has more than approximately 20% of total market share.⁶ Thus, in such a low-concentrated and highly competitive market, no single equities trading venue possesses significant pricing power in the execution of trades, and, the Exchange currently represents a very small percentage of the overall market.

The purpose of this proposed fee change is for business and competitive reasons. As a new entrant into the equities market, the Exchange initially adopted a fee structure that provided that orders in securities priced below \$1.00 would be free that executed at MIAX PEARL Equities, regardless of whether they add or remove liquidity to encourage market participants to submit orders to the Exchange. In response to competitive forces,⁷ the Exchange recently adopted fees and rebates for securities priced below \$1.00 where it charges a standard fee of 0.30% of the total dollar value of any transaction in securities priced below \$1.00 that removes liquidity from MIAX PEARL Equities and provides a standard rebate of 0.30% of the total dollar value of any transaction in securities priced below \$1.00 that adds displayed or non-displayed liquidity to MIAX PEARL Equities.⁸

Again in response to competitive forces,⁹ the Exchange proposes herein to lower both the fee and rebate for securities priced below \$1.00. Specifically, the Exchange now proposes to charge a standard fee of 0.05% of the total dollar value of any transaction in securities priced

⁶ See supra note 4.

⁷ See Securities Exchange Act Release No. 90555 (December 3, 2020) (SR-MEMX-2020-14) (filed November 30, 2020).

⁸ See SR-PEARL-2020-32 (filed December 2, 2020), available at https://www.miaxoptions.com/sites/default/files/filing-files/SR_PEARL_2020_32.

⁹ See Members Exchange, LLC (“MEMX”) Trader Alert 20-13: Fee Schedule Updates Effective December 4, 2020 available at <https://info.memxtrading.com/trader-alert-20-13-fee-schedule-updates-effective-december-4-2020/>.

below \$1.00 that removes liquidity from MIAX PEARL Equities. The Exchange also now proposes to provide a standard rebate of 0.05% of the total dollar value of any transaction in securities priced below \$1.00 that adds displayed or non-displayed liquidity to MIAX PEARL Equities.

The rebate proposed herein for executed orders that add liquidity in securities priced below \$1.00 continues to be intended to increase order flow in securities priced below \$1.00 to MIAX PEARL Equities by incentivizing Equity Members¹⁰ to increase the liquidity-providing orders in securities priced below \$1.00 they submit to MIAX PEARL Equities, which would support price discovery on MIAX PEARL Equities and provide additional liquidity for incoming orders. However, the Exchange now seeks to lower the fee to remove liquidity in securities priced below \$1.00 on MIAX PEARL Equities to attract additional incoming orders that seek to remove liquidity with a corresponding change to similarly lower the rebate to add liquidity in securities priced below \$1.00. As a result, the lower fee proposed herein for executed orders that remove liquidity from MIAX PEARL Equities continues to be intended to directly offset the newly proposed rebate provided for executed orders that add liquidity in securities priced below \$1.00 so that MIAX PEARL Equities may continue to remain revenue neutral with respect to such transactions while attempting to compete with other venues to attract this order flow.

The proposed fee change will become effective on December 4, 2020. The Exchange does not propose any other changes to the MIAX PEARL Equities Fee Schedule.

¹⁰ The term “Equity Member” means a Member authorized by the Exchange to transact business on MIAX PEARL Equities. See Exchange Rule 1901.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act¹¹ in general, and furthers the objectives of Section 6(b)(4) of the Act¹² in particular, in that it is an equitable allocation of reasonable fees and other charges among its members and issuers and other persons using its facilities. As discussed above, the Exchange operates in a highly fragmented and competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or rebates/incentives to be insufficient. The Exchange believes that the Fee Schedule reflects a simple and competitive pricing structure, which is designed to incentivize market participants to add aggressively priced displayed liquidity and direct their order flow to the Exchange. The Exchange believes the proposed rebate and fee structure for orders that add or remove liquidity in securities priced below \$1.00 would continue to incentivize submission of additional liquidity in securities priced below \$1.00, thereby promoting price discovery and deepen liquidity, enhancing order execution opportunities for all Equity Members and investors.

In particular, the Exchange believes that the proposed rebate for orders that add liquidity in securities priced below \$1.00 is reasonable because it would continue to incentivize Equity Members to direct more order flow in securities priced below \$1.00 to the Exchange. The Exchange notes that one other exchange provides the same rebate as proposed herein,¹³ and other

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(4) and (5).

¹³ See supra note 9.

exchanges provide rebates for liquidity-adding transactions in securities priced below \$1.00, but that these are denominated in dollar amounts per share rather than a percentage of the total dollar amount of the transaction.¹⁴ The Exchange expects that the proposed rebate for orders that add liquidity in securities priced below \$1.00, albeit lower than that previously in place, would continue to typically result in a higher overall credit for a given transaction than the rebates offered by other exchanges, although the Exchange notes that it may also result in a lower overall credit for such transactions depending on the number of shares traded and the total dollar value of the transaction. The Exchange also believes that the proposed lower fee for orders that remove liquidity in securities priced below \$1.00 is reasonable because it is in line with the fees charged by at least one other exchange¹⁵ while also seeking to attract an increased number of liquidity-removing transactions in securities priced below \$1.00 on MIAX PEARL Equities. The Exchange believes an increase in liquidity removing orders may lead to a corresponding increase in liquidity adding orders, thereby increasing the depth of the MIAX PEARL Equities' Book and improving price discovery.

The Exchange believes that, given the competitive environment in which MIAX PEARL Equities currently operates, the proposed pricing structure, with an offsetting fee and rebate for executions of transactions in securities priced below \$1.00 continues to be a reasonable attempt to increase liquidity in securities priced below \$1.00 on MIAX PEARL Equities and improve the

¹⁴ See, e.g., the Cboe EDGX equities trading fee schedule on its public website (available at https://markets.cboe.com/us/equities/membership/fee_schedule/edgx/), which reflects a rebate of \$0.00009 per share for liquidity-adding transactions in securities priced below \$1.00 per share; the NYSE Arca equities trading fee schedule on its public website (available at https://www.nyse.com/publicdocs/nyse/markets/nysearca/NYSE_Arca_Marketplace_Fee_s.pdf), which reflects a rebate of \$0.00004 per share for liquidity-adding transactions in securities priced below \$1.00 per share.

¹⁵ See *supra* note 9.

MIAX PEARL Equities' market share relative to its competitors while remaining revenue neutral with respect to such transactions.

The Exchange also believes that the proposed fee and rebate structure applicable to executions of transactions in securities priced below \$1.00 continues to be equitably allocated and not unfairly discriminatory because it applies equally to all Equity Members and is reasonably related to the value of MIAX PEARL Equities' market quality associated with higher volume. A number of Equity Members currently transact in securities priced below \$1.00 and they, along with additional Equity Members that choose to direct order flow in securities priced below \$1.00 to the Exchange, would all continue to qualify for the proposed fee and rebate. The Exchange believes that maintaining or increasing the proportion of transactions in securities priced below \$1.00 that are executed on MIAX PEARL Equities would benefit all investors by deepening the MIAX PEARL Equities' liquidity pool, which would support price discovery, promote market transparency and improve investor protection, further rendering the proposed changes reasonable and equitable.

Further, 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, while adopting a series of steps to improve the current market model, 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."¹⁶

¹⁶ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (File No. S7-10-04) ("Regulation NMS").

As the Commission itself recognized, the market for trading services in NMS stocks has become “more fragmented and competitive.”¹⁷ Indeed, equity trading is currently dispersed across 16 exchanges,¹⁸ 31 alternative trading systems,¹⁹ and numerous broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange currently has more than 20% market share (whether including or excluding auction volume).²⁰ Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, the Exchange only recently launched trading operations on September 25, 2020, and thus has a market share of approximately less than 1% of executed volume of equities trading.

The Exchange has designed its proposed rates for securities priced below \$1.00 to balance the need to attract order flow as a new exchange entrant with the desire to continue to provide a simple pricing structure to market participants. The Exchange believes its proposed rates for securities priced below \$1.00 structure continues to enable the Exchange to compete for order flow. In fact, this proposal and its predecessor²¹ are direct competitive responses to recent changes made by another exchange.²² The Exchange believes that the ever-shifting market share among the exchanges demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. With respect to non-marketable orders which provide liquidity on an exchange, Equity Members can choose from

¹⁷ See Securities Exchange Act Release No. 82873 (March 14, 2018), 83 FR 13008 (March 26, 2018) (File No. S7-05-18) (Transaction Fee Pilot for NMS Stocks).

¹⁸ See supra note 4.

¹⁹ See supra note 5.

²⁰ See supra note 4.

²¹ See supra note 8.

²² See supra notes 7 and 9.

any one of the 16 currently operating registered exchanges to route such order flow.

Accordingly, competitive forces reasonably constrain exchange transaction fees that relate to orders that would provide displayed liquidity on an exchange. Stated otherwise, changes to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow. Given this competitive environment, the Exchange's proposed rates for securities priced below \$1.00 represents a reasonable attempt to attract order flow to a new exchange entrant.

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

The Exchange 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. Rather, the Exchange believes that the proposed change would encourage the submission of additional order flow to a public exchange, thereby promoting market depth, execution incentives and enhanced execution opportunities, as well as price discovery and transparency for all Equity Members and non-Equity Members. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."²³

The Exchange does not believe that the proposed rates for securities priced below \$1.00 will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that the proposed rates will continue to increase competition and they are intended to draw volume to the Exchange. As stated above, this proposal and its predecessor²⁴ are direct competitive responses

²³ See supra note 16.

²⁴ See supra note 8.

to recent changes made by another exchange.²⁵ The Exchange believes that the ever-shifting market share among the exchanges 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. As a new exchange, the Exchange faces intense competition from existing exchanges and other non-exchange venues that provide markets for equities trading.

Further, while pricing incentives do cause shifts of liquidity between trading centers, market participants make determinations on where to provide liquidity or route orders to take liquidity based on factors other than pricing, including technology, functionality, and other considerations. Consequently, the Exchange believes that the degree to which its proposed rates for securities priced below \$1.00 could impose any burden on competition is extremely limited, and does not believe that such rates would burden competition of Equity Members or competing venues in a manner that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange does not believe that the proposed rates for securities priced below \$1.00 will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed rates for securities priced below \$1.00 will continue to apply equally to all Equity Members. The proposed rates for securities priced below \$1.00 continue to be intended to encourage market participants to both remove and add liquidity to the Exchange by providing a rates that are comparable to those offered by other exchanges, which the Exchange believes will help to encourage Equity Members to send orders

²⁵ See supra notes 7 and 9.

to the Exchange to the benefit of all Exchange participants. As the proposed pricing structure for securities priced below \$1.00 are equally applicable to all market participants, the Exchange does not believe there is any burden on intramarket competition.

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,²⁶ and Rule 19b-4(f)(2)²⁷ 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

²⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

²⁷ 17 CFR 240.19b-4(f)(2).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-PEARL-2020-34 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-2020-34. This file number should be included on the subject line if e-mail 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 (<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. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All

submissions should refer to File Number SR-PEARL-2020-34, 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.²⁸

J. Matthew DeLesDernier
Assistant Secretary

²⁸ 17 CFR 200.30-3(a)(12).