

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-95775; File No. SR-PEARL-2022-35)

September 14, 2022

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

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 September 1, 2022, 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 Options Fee Schedule (the “Fee Schedule”) to remove two monthly credits associated with Trading Permit³ and non-transaction fees.

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 The term “Trading Permit” means a permit issued by the Exchange that confers the ability to transact on the Exchange. See Exchange Rule 100.

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 commenced operations in February 2017⁴ and adopted its initial fee schedule that waived fees for Trading Permits to trade on the Exchange.⁵ In 2018, as the Exchange's market share increased,⁶ the Exchange adopted a nominal fee for Trading Permits along with a tiered-volume based fee credit, known as the Trading Permit Fee Credit, and a Monthly Volume Credit.⁷ The Exchange established the Trading Permit Fee Credit to continue to attract order flow and increase membership by lowering the costs for Members.⁸

⁴ See MIAx PEARL Successfully Launches Trading Operations, dated February 6, 2017, available at https://www.miaxoptions.com/sites/default/files/alert-files/MIAx_Press_Release_02062017.pdf.

⁵ See Securities Exchange Act Release No. 80061 (February 17, 2017), 82 FR 11676 (February 24, 2017) (SR-PEARL-2017-10).

⁶ The Exchange experienced a monthly average trading volume of 3.94% for the month of March 2018. See Market at a Glance, available at www.miaxoptions.com (last visited (August 29, 2022)).

⁷ See Securities Exchange Act Release No. 82867 (March 13, 2018), 83 FR 12044 (March 19, 2018) (SR-PEARL-2018-07).

⁸ The term "Member" means an individual or organization that is registered with the Exchange pursuant to Chapter II of 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 Exchange Rule 100 and the Definitions

The Exchange believes that the Trading Permit Fee Credit and Monthly Volume Credit have served their purpose of incentivizing market participants to trade on the Exchange as the Exchange's market share continues to grow and increase since the credits were established.⁹ Therefore, the Exchange now proposes to remove the two monthly credits associated with Trading Permit and non-transaction fees from the Fee Schedule.

Monthly Volume Credit

The Exchange proposes to amend the Definitions section of the Fee Schedule to delete the definition and remove the credits applicable to the Monthly Volume Credit for Members. The Exchange established the Monthly Volume Credit in 2018¹⁰ to encourage Members to send increased Priority Customer¹¹ order flow to the Exchange, which the Exchange applied as a metric to the assessment of non-transaction fees for that Member. During the period when the Monthly Volume Credit was in effect (as further described below), the Exchange applied a different Monthly Volume Credit depending on whether the Member connected to the Exchange

Section of the Fee Schedule.

⁹ The Exchange experienced a monthly average trading volume of 4.75% for the month of August 2022 (as of August 29, 2022). See Market at a Glance, supra note 6.

¹⁰ See supra note 7.

¹¹ The term "Priority Customer" means 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 accounts(s). The number of orders shall be counted in accordance with Interpretation and Policy .01 of Exchange Rule 100. See the Definitions Section of the Fee Schedule and Exchange Rule 100, including Interpretation and Policy .01.

via the FIX Interface¹² or MEO Interface.¹³ During the period when the Monthly Volume Credit was in effect, the Exchange assessed the Monthly Volume Credit to each Member that had executed Priority Customer volume along with that of its affiliates,¹⁴ not including Excluded Contracts,¹⁵ of at least 0.30% of MIAX Pearl-listed Total Consolidated Volume (“TCV”),¹⁶ as set forth in the following table:

¹² The term “FIX Interface” means the Financial Information Exchange interface for certain order types as set forth in Exchange Rule 516. See the Definitions Section of the Fee Schedule and Exchange Rule 100.

¹³ The term “MEO Interface” or “MEO” means a binary order interface for certain order types as set forth in Rule 516 into the MIAX Pearl System. See the Definitions Section of the Fee Schedule and Exchange Rule 100.

¹⁴ “Affiliate” means (i) an affiliate of a Member of at least 75% common ownership between the firms as reflected on each firm’s Form BD, Schedule A, or (ii) the Appointed Market Maker of an Appointed EEM (or, conversely, the Appointed EEM of an Appointed Market Maker). An “Appointed Market Maker” is a MIAX Pearl Market Maker (who does not otherwise have a corporate affiliation based upon common ownership with an EEM) that has been appointed by an EEM and an “Appointed EEM” is an EEM (who does not otherwise have a corporate affiliation based upon common ownership with a MIAX Pearl Market Maker) that has been appointed by a MIAX Pearl Market Maker, pursuant to the following process. A MIAX Pearl Market Maker appoints an EEM and an EEM appoints a MIAX Pearl Market Maker, for the purposes of the Fee Schedule, by each completing and sending an executed Volume Aggregation Request Form by email to membership@miaxoptions.com no later than 2 business days prior to the first business day of the month in which the designation is to become effective. Transmittal of a validly completed and executed form to the Exchange along with the Exchange’s acknowledgement of the effective designation to each of the Market Maker and EEM will be viewed as acceptance of the appointment. The Exchange will only recognize one designation per Member. A Member may make a designation not more than once every 12 months (from the date of its most recent designation), which designation shall remain in effect unless or until the Exchange receives written notice submitted 2 business days prior to the first business day of the month from either Member indicating that the appointment has been terminated. Designations will become operative on the first business day of the effective month and may not be terminated prior to the end of the month. Execution data and reports will be provided to both parties. See the Definitions Section of the Fee Schedule.

¹⁵ “Excluded Contracts” means any contracts routed to an away market for execution. See the Definitions Section of the Fee Schedule.

¹⁶ “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

Type of Member Connection	Monthly Volume Credit
Member that connects via the FIX Interface	\$250
Member that connects via the MEO Interface	\$1,000

If a Member connected via both the MEO Interface and FIX Interface and qualified for the Monthly Volume Credit based upon its Priority Customer volume, the greater Monthly Volume Credit would apply to such Member. During the periods when the Monthly Volume Credit was in effect, the Monthly Volume Credit was a single, once-per-month credit towards the aggregate monthly total of non-transaction fees assessable to a Member.

The Exchange proposes to amend the Definitions section of the Fee Schedule to delete the definition and remove the Monthly Volume Credit. The Exchange established the Monthly Volume Credit when it first launched operations to encourage Members to increase their order flow by providing a credit to those that exceeded a volume threshold. The Exchange believes that the Exchange's existing Priority Customer rebates and fees will continue to allow the Exchange to remain highly competitive and continue to attract order flow and maintain market share even without the Monthly Volume Credit.¹⁷

Trading Permit Fee Credit

The Exchange proposes to amend Section 3)b) of the Fee Schedule to remove the Trading Permit fee credit that is denoted in footnote "*" below the Trading Permit fee table. During periods when the Trading Permit fee credit was in effect, the Trading Permit fee credit was applicable to Members that connected via both the MEO and FIX Interfaces. Members who connected via both the MEO and FIX Interfaces were assessed the rates for both types of Trading

consolidated volume executed during the period of time in which the Exchange experiences an Exchange System Disruption (solely in the option classes of the affected Matching Engine). See the Definitions Section of the Fee Schedule.

¹⁷ See, generally, Fee Schedule, Section 1)a).

Permits, but these Members received a \$100 monthly credit towards the Trading Permit fees applicable to the MEO Interface. The Exchange proposes to remove the Trading Permit fee credit and delete footnote “*” from Section 3)b) of the Fee Schedule.

The Exchange established the Trading Permit fee credit when it first launched operations to attract order flow and increase membership by lowering the costs for Members that connect via the MEO Interface and FIX Interface. The Exchange believes the Trading Permit fee credit has achieved its purpose and the Exchange believes that it is appropriate to remove this credit in light of the current operating conditions and membership population on the Exchange.

Implementation and Procedural History

The proposed rule change will be immediately effective. The Exchange initially filed this proposal to remove the two monthly credits associated with Trading Permit and non-transaction fees on July 1, 2021, with the proposed fees being immediately effective.¹⁸ In that proposal, the Exchange also proposed to increase its Trading Permit fees. Between August 2021 and August 2022, the Exchange withdrew and refiled the proposed rule change, each time to meaningfully attempt to provide additional justification for the proposed fee changes, provide enhanced details regarding the Exchange’s cost methodology or to supplement its competition based arguments.¹⁹

¹⁸ See Securities Exchange Act Release No. 92366 (July 9, 2021), 86 FR 37379 (SR-PEARL-2021-32).

¹⁹ See Securities Exchange Act Release Nos. 92797 (August 27, 2021), 86 FR 49399 (September 2, 2021) (SR-PEARL-2021-32) (“Suspension Order 1”); 93555 (November 10, 2021), 86 FR 64254 (November 17, 2021) (SR-PEARL-2021-54); 93895 (January 4, 2022), 87 FR 1217 (January 10, 2022) (SR-PEARL-2021-59); 94287 (February 18, 2022), 87 FR 10837 (February 25, 2022) (SR-PEARL-2022-05) (“Suspension Order 2”); 94696 (April 12, 2022), 87 FR 22987 (April 18, 2022) (SR-PEARL-2022-09); 94993 (May 26, 2022), 87 FR 33518 (June 2, 2022) (SR-PEARL-2022-23); SR-PEARL-2022-28; and Securities Exchange Act Release No. 95419 (August 4, 2022), 87 FR 48702 (August 10, 2022) (SR-PEARL-2022-30).

The Commission received three comment letters from one commenter on the various filings.²⁰ The Exchange withdrew its latest proposal and submits this proposal to only remove the two monthly credits associated with Trading Permit and non-transaction fees. The Exchange does not propose to amend its Trading Permit fees in this filing.

The proposed changes will be effective beginning September 1, 2022.

2. Statutory Basis

The Exchange believes that its proposal to amend the Fee Schedule is consistent with Section 6(b) of the Act²¹ in general, and furthers the objectives of Section 6(b)(4) of the Act²² 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 proposed changes to the Fee Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for order flow, which constrains its pricing determinations. The fact that the market for order flow is competitive has long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated, “[n]o one disputes that competition for order flow is ‘fierce.’ ... As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market

²⁰ See Letters from Richard J. McDonald, Susquehanna International Group, LLC (“SIG”), to Vanessa Countryman, Secretary, Commission, dated September 28, 2021, March 15, 2022, and May 9, 2022.

²¹ 15 U.S.C. 78f(b).

²² 15 U.S.C. 78f(b)(4) and (5).

share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’....”²³

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention to determine 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.”²⁴

The Exchange believes its proposal to remove the Monthly Volume Credit is reasonable, equitable and not unfairly discriminatory because all market participants will no longer be offered the ability to achieve the extra credits associated with the Monthly Volume Credit for submitting Priority Customer volume to the Exchange and access to the Exchange is offered on terms that are not unfairly discriminatory. The Exchange believes it is equitable and not unfairly discriminatory to remove the Monthly Volume Credit from the Fee Schedule for business and competitive reasons. The Exchange established the Monthly Volume Credit when it first launched operations to encourage Members to increase their order flow by providing a credit to those that exceeded a volume threshold. The Exchange believes that the Exchange’s existing Priority Customer rebates and fees will continue to allow the Exchange to remain highly

²³ See NetCoalition, 615 F.3d at 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

²⁴ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

competitive and continue to attract order flow and maintain market share even without the Monthly Volume Credit.²⁵

The Exchange believes its proposal to remove the Trading Permit fee credit for Members that connect via both the MEO Interface and FIX Interface is reasonable, equitable and not unfairly discriminatory because all market participants will no longer be offered the ability to receive the credit and access to the Exchange is offered on terms that are not unfairly discriminatory. The Exchange believes it is equitable and not unfairly discriminatory to remove the Trading Permit fee credit for business and competitive reasons. The Exchange established the Trading Permit fee credit to lower the costs for Members that connect via the MEO Interface and/or FIX Interface as a means to attract order flow and memberships after the Exchange first launched operations. The Exchange now believes that it is appropriate to remove this credit in light of the current operating conditions and membership on the Exchange.

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

In accordance with Section 6(b)(8) of the Act,²⁶ the Exchange believes that the proposed rule change would not impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intra-Market Competition

The Exchange believes the removal of the Monthly Volume Credit and Trading Permit fee credit will not place certain market participants at a relative disadvantage to other market participants because, in order to attract order flow when the Exchange first launched operations, the Exchange established these credits to lower the initial fixed cost for Members. The

²⁵ See Fee Schedule, Section 1)a).

²⁶ 15 U.S.C. 78f(8).

Exchange now believes that it is appropriate to remove these credits in light of the current operating conditions, including the Exchange's overall membership and the current type and amount of volume executed on the Exchange. The Exchange believes that the Exchange's current rebates and fees will still allow the Exchange to remain highly competitive such that the Exchange should continue to attract order flow and maintain market share.

Inter-Market Competition

The Exchange operates in a highly competitive market in which market participants can readily favor one of the 15 competing options venues if they deem fee levels at a particular venue to be excessive. Based on publicly-available information, and excluding index-based options, no single exchange has more than approximately 16% market share. Therefore, no exchange possesses significant pricing power regarding memberships or in the execution of multiply-listed equity and exchange-traded fund ("ETF") options order flow. Over the course of 2021 and 2022, the Exchange's market share has fluctuated between approximately 3-6% of the U.S. equity options industry.²⁷ The Exchange is not aware of any evidence that a market share of approximately 3-6% provides the Exchange with anti-competitive pricing power when it comes to competition for memberships. The Exchange believes that the ever-shifting market share among exchanges from month to month demonstrates that market participants can discontinue memberships in response to fee changes. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract and retain memberships on the Exchange. Lastly, the proposed fee change will not impact intermarket competition because it will apply to all Members equally.

²⁷ See supra note 6.

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,²⁸ and Rule 19b-4(f)(2)²⁹ 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 email to rule-comments@sec.gov. Please include File Number SR-PEARL-2022-35 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.

²⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

²⁹ 17 CFR 240.19b-4(f)(2).

All submissions should refer to File Number SR-PEARL-2022-35. 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 (<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-2022-35 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.³⁰

J. Matthew DeLesDernier

Deputy Secretary

³⁰ 17 CFR 200.30-3(a)(12).