

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-96044; File No. SR-PEARL-2022-42)

October 12, 2022

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 29, 2022, MIAX PEARL, LLC (“MIAX Pearl” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the 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”).

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.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 Add/Remove Tiered Rebates/Fees set forth in Section 1)a) of the Fee Schedule to: (1) modify the volume threshold for the alternative volume criteria for certain Maker (defined below) rebates for Non-Priority Customer, Firm, Broker-Dealer (“BD”), and Non-MIAX Pearl Market Maker origins (collectively, “Professional Members”); (2) lower the alternative Maker rebate for Professional Members in Penny Classes (defined below); and (3) modify the volume threshold for the alternative volume criteria for the lower Taker (defined below) fee for Professional Members’ Firm origin when trading against origins other than Priority Customer³ in Penny Classes.

Background

The Exchange currently assesses transaction rebates and fees to all market participants which are based upon the total monthly volume executed by the Member⁴ on MIAX Pearl in the

³ “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.

⁴ “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 the Definitions Section of the Fee Schedule and Exchange Rule 100.

relevant, respective origin type (not including Excluded Contracts)⁵ (as the numerator) expressed as a percentage of (divided by) TCV⁶ (as the denominator). In addition, the per contract transaction rebates and fees are applied retroactively to all eligible volume for that origin type once the respective threshold tier (“Tier”) has been reached by the Member. The Exchange aggregates the volume of Members and their Affiliates.⁷ Members that place resting liquidity,

⁵ “Excluded Contracts” means any contracts routed to an away market for execution. See the Definitions Section of the Fee Schedule.

⁶ “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 an “Exchange System Disruption” (solely in the option classes of the affected Matching Engine (as defined below)). The term Exchange System Disruption, which is defined in the Definitions section of the Fee Schedule, means an outage of a Matching Engine or collective Matching Engines for a period of two consecutive hours or more, during trading hours. The term Matching Engine, which is also defined in the Definitions section of the Fee Schedule, is a part of the MIAX Pearl electronic system that processes options orders and trades on a symbol-by-symbol basis. Some Matching Engines will process option classes with multiple root symbols, and other Matching Engines may be dedicated to one single option root symbol (for example, options on SPY may be processed by one single Matching Engine that is dedicated only to SPY). A particular root symbol may only be assigned to a single designated Matching Engine. A particular root symbol may not be assigned to multiple Matching Engines. The Exchange believes that it is reasonable and appropriate to select two consecutive hours as the amount of time necessary to constitute an Exchange System Disruption, as two hours equates to approximately 1.4% of available trading time per month. The Exchange notes that the term “Exchange System Disruption” and its meaning have no applicability outside of the Fee Schedule, as it is used solely for purposes of calculating volume for the threshold tiers in the Fee Schedule. See the Definitions Section of the Fee Schedule.

⁷ “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

i.e., orders resting on the book of the MIAX Pearl System,⁸ are paid the specified “maker” rebate (each a “Maker”), and Members that execute against resting liquidity are assessed the specified “taker” fee (each a “Taker”). For opening transactions and ABBO⁹ uncrossing transactions, per contract transaction rebates and fees are waived for all market participants. Finally, Members are assessed lower transaction fees and receive lower rebates for order executions in standard option classes in the Penny Interval Program¹⁰ (“Penny Classes”) than for order executions in standard option classes that are not in the Penny Interval Program (“Non-Penny Classes”), where Members are assessed higher transaction fees and receive higher rebates.

Proposal to Modify the Volume Threshold for the Alternative Volume Criteria for Certain Maker Rebates for Professional Members and Lower the Alternative Rebate for Professional Members in Penny Classes

The Exchange proposes to amend footnote “^” below the tables in the Add/Remove Tiered Rebates/Fees section set forth in Section 1)a) of the Fee Schedule to decrease the

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.

⁸ The term “System” means the automated trading system used by the Exchange for the trading of securities. See Exchange Rule 100.

⁹ “ABBO” means the best bid(s) or offer(s) disseminated by other Eligible Exchanges (defined in Exchange Rule 1400(g)) and calculated by the Exchange based on market information received by the Exchange from OPRA. See the Definitions Section of the Fee Schedule and Exchange Rule 100.

¹⁰ See Securities Exchange Act Release No. 88992 (June 2, 2020), 85 FR 35142 (June 8, 2020) (SR-PEARL-2020-06).

affiliated Priority Customer threshold in order for Members to qualify for alternative Maker rebates for options transactions in all classes for Professional Members, provided that the Member meets certain volume criteria. Currently, Professional Members may qualify for Maker rebates equal to the greater of: (A) (\$0.40) for Penny Classes and (\$0.65) for Non-Penny Classes, or (B) the amount set forth in the applicable Tier reached by the Member in the relevant origin, if the Member and their Affiliates execute at least 2.25% volume in the relevant month, in Priority Customer origin type, in all options classes, not including Excluded Contracts, as compared to the TCV in all MIAX Pearl listed option classes.

The Exchange proposes to decrease the affiliated Priority Customer threshold percentage amount in footnote “^” in order for Members to qualify for the alternative Maker rebates for their Professional Members. The threshold will change from at least 2.25% to at least 1.25% volume in the relevant month, in Priority Customer origin type, in all options classes, not including Excluded Contracts, as compared to the TCV in all MIAX Pearl listed option classes. For purposes of qualifying for such rates, the Exchange will continue to aggregate the Priority Customer volume transacted by Members and their Affiliates. As the amount and type of volume that is executed on the Exchange has shifted since it first established the alternative Maker rebates for options transactions in all classes for Professional Members, provided that the Member meets certain volume criteria, the Exchange has determined to level-set this threshold amount so that it is more reflective of the current operating conditions and the current type and amount of volume executed on the Exchange.¹¹ This change is also for business and competitive

¹¹ See Securities Exchange Act Release Nos. 91605 (April 16, 2021), 86 FR 21405 (April 22, 2021) (SR-PEARL-2021-16); 83419 (June 12, 2018), 83 FR 28285 (June 18, 2018) (SR-PEARL-2018-13); 85608 (April 11, 2019), 84 FR 16073 (April 17, 2019) (SR-PEARL-2019-13).

reasons in order to attract additional Priority Customer volume from Professional Members by decreasing the alternative volume threshold in order for Professional Members to achieve the alternative Maker rebates denoted by footnote “^”, which should benefit all Exchange participants by providing more trading opportunities and tighter spreads.

The Exchange also proposes to amend footnote “^” to decrease the alternative Maker rebate for Professional Members in Penny Classes. As described above, footnote “^” provides that Members may achieve an alternative Maker rebate of (\$0.40) in Penny Classes if a certain volume threshold is achieved in the Priority Customer origin type, in all options classes, not including Excluded Contracts, as compared to the TCV in all MIAX Pearl listed option classes. The Exchange now proposes to decrease this Maker rebate from (\$0.40) to (\$0.37). Accordingly, with both of the proposed changes to footnote “^,” Members may qualify for Maker rebates equal to the greater of: (A) (\$0.37) for Penny Classes and (\$0.65) for Non-Penny Classes, or (B) the amount set forth in the applicable Tier reached by the Member in the relevant origin, if the Member and their Affiliates execute at least 1.25% volume in the relevant month, in Priority Customer origin type, in all options classes, not including Excluded Contracts, as compared to the TCV in all MIAX Pearl listed option classes.

The purpose of adjusting the specified Maker rebate is for business and competitive reasons. In order to attract order flow, the Exchange initially set its Maker rebates so that they were higher than other options exchanges that operate comparable maker/taker pricing models.¹² The Exchange believes that it is appropriate to adjust this specified Maker rebate so that it is

¹² See Securities Exchange Act Release Nos. 80061 (February 17, 2017), 82 FR 11676 (February 24, 2017) (SR-PEARL-2017-10) (establishing the Exchange’s fee schedule with Market Maker and Professional Member Maker Penny Class rebates ranging from (\$0.25) in Tier 1 to (\$0.48) in Tier 4, the highest Tier at that time).

more in line with other exchanges, but will remain highly competitive such that it should enable the Exchange to continue to attract order flow and maintain market share.¹³

Proposal to Modify the Volume Threshold for the Alternative Volume Criteria for the Lower Taker Fee for Professional Members' Firm Origin When Trading Against Origins Other Than Priority Customer in Penny Classes

The Exchange proposes to amend footnote “◇” below the tables in the Add/Remove Tiered Rebates/Fees section set forth in Section 1)a) of the Fee Schedule to decrease the affiliated Priority Customer threshold in which Members may qualify for alternative lower Taker fee for options transactions in Penny Classes for Professional Members' Firm origin, provided that the Member meets certain volume criteria. Currently, Professional Members may qualify for the alternative lower Taker fee for their Firm origin of \$0.48 in Penny Classes when trading against origins other than Priority Customer if the Member and their Affiliates execute at least 2.25% of TCV in the relevant month in the Priority Customer origin type, in all options classes, not including Excluded Contracts, as compared to TCV in all MIAX Pearl listed option classes.

The Exchange proposes to decrease the affiliated Priority Customer threshold percentage amount in footnote “◇” in order for Members' Firm origin to qualify for the alternative lower Taker fee. The threshold will change from at least 2.25% to at least 1.25% of TCV in the relevant month, in Priority Customer origin type, in all options classes, not including Excluded Contracts, as compared to the TCV in all MIAX Pearl listed option classes. As the amount and type of volume that is executed on the Exchange has shifted since it first established the

¹³ See, generally, The Nasdaq Stock Market, Options 7 Pricing Schedule, Section 2 (Professional Member rebates ranging from \$0.20 in Tier 1 to \$0.48 in Tier 6); Cboe BZX Options Fee Schedule, Standard Rates (Professional rebates for Penny Class securities ranging from \$0.25 to \$0.48 for adding liquidity; and Firm, Broker-Dealer, Joint Back Office rebates for Penny Class securities ranging from \$0.25 to \$0.46 for adding liquidity).

alternative Taker fee,¹⁴ the Exchange has determined to level-set this threshold amount so that it is more reflective of the current operating conditions and the current type and amount of volume executed on the Exchange. The purpose of this change is also for business and competitive reasons in order to attract additional Priority Customer volume by decreasing the alternative volume threshold in order for Professional Members to achieve the lower Taker fee for their Firm origin orders, which should benefit all Exchange participants by providing more trading opportunities and tighter spreads.

Implementation

The proposed changes are effective beginning October 1, 2022.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act¹⁵ in general, and furthers the objectives of Section 6(b)(4) of the Act,¹⁶ in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange members and issuers and other persons using its facilities, and 6(b)(5) of the Act,¹⁷ in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and

¹⁴ See Securities Exchange Act Release Nos. 85608 (April 11, 2019), 84 FR 16073 (April 17, 2019) (SR-PEARL-2019-13) (establishing lower alternative Taker fee for Firm origin with volume threshold of 2.00% of TCV); 85807 (May 8, 2019), 84 FR 21368 (May 14, 2019) (SR-PEARL-2019-15) (removing one of the conditions that must be met in order for Members to qualify for the alternative lower Taker fee for Penny Classes for their Firm origin).

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(4).

¹⁷ 15 U.S.C. 78f(b)(1) and (b)(5).

open market and a national market system and, in general, to protect investors and the public interest.

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, 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.”¹⁸

There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, as of September 26, 2022, no single exchange has more than approximately 10-11% equity options market share for the month of September 2022.¹⁹ Therefore, no exchange possesses significant pricing power. More specifically, as of September 26, 2022, the Exchange has a market share of approximately 4.04% of executed volume of multiply-listed equity options for the month of September 2022.²⁰

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can discontinue or reduce use of certain categories of products and services, terminate an existing membership or determine to not become a new member, and/or shift order flow, in response to transaction fee changes. For example, on February 28, 2019, the Exchange filed with the Commission a proposal to increase Taker fees in

¹⁸ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

¹⁹ See “The market at a glance,” (last visited September 26, 2022), [available at https://www.miaxoptions.com/](https://www.miaxoptions.com/).

²⁰ See id.

certain Tiers for options transactions in certain Penny classes for Priority Customers and decrease Maker rebates in certain Tiers for options transactions in Penny classes for Priority Customers (which fee was to be effective March 1, 2019).²¹ The Exchange experienced a decrease in total market share for the month of March 2019, after the proposal went into effect. Accordingly, the Exchange believes that its March 1, 2019, fee change, to increase certain transaction fees and decrease certain transaction rebates, may have contributed to the decrease in MIAX Pearl's market share and, as such, the Exchange believes competitive forces constrain the Exchange's, and other options exchanges, ability to set transaction fees and market participants can shift order flow based on fee changes instituted by the exchanges.

The Exchange believes its proposal to decrease the Priority Customer threshold for alternative Maker rebates for options transactions in all classes for Professional Members, provided that the Member meets certain volume criteria is reasonable, equitable and not unfairly discriminatory because all similarly situated market participants are subject to the same tiered rebates and fees. The Exchange believes that providing alternative Maker rebates for options transactions in all classes for Professional Members (if the Member meets certain volume criteria relating to Priority Customer volume), and adjusting the threshold requirement so that it is reflective of current operating conditions and the current type and amount of volume executed on the Exchange, will encourage Members to execute additional Priority Customer and Professional Member volume on the Exchange. The Exchange believes that additional Priority Customer and Professional Member volume executed on the Exchange will attract further liquidity to the Exchange, which in turn will benefit all market participants.

²¹ See Securities Exchange Act Release No. 85304 (March 13, 2019), 84 FR 10144 (March 19, 2019) (SR-PEARL-2019-07).

The Exchange believes its proposal to decrease the alternative Maker rebate for Professional Members in Penny Classes is reasonable, equitable and not unfairly discriminatory because all similarly situated market participants are subject to the same tiered rebates and fees. In order to attract order flow, the Exchange initially set its Maker rebates so that they were higher than other options exchanges that operate comparable maker/taker pricing models.²² The Exchange believes that it is reasonable and equitable to adjust this specified Maker rebate so that it is more in line with other exchanges, but will remain highly competitive such that it should enable the Exchange to continue to attract order flow and maintain market share.²³

The Exchange believes its proposal to decrease the Priority Customer threshold for the alternative lower Taker fee for Professional Members' Firm origin, provided that the Member meets certain volume criteria is reasonable, equitable and not unfairly discriminatory because all similarly situated market participants are subject to the same tiered rebates and fees. The Exchange believes that providing the lower alternative Taker fee for Professional Members Firm origin (if the Member meets certain volume criteria relating to Priority Customer volume), and adjusting the threshold requirement so that it is reflective of current operating conditions and the current type and amount of volume executed on the Exchange, will encourage Members to execute additional Priority Customer and Professional Member volume on the Exchange. The

²² See Securities Exchange Act Release Nos. 80061 (February 17, 2017), 82 FR 11676 (February 24, 2017) (SR-PEARL-2017-10) (establishing the Exchange's fee schedule with Market Maker and Professional Member Maker Penny Class rebates ranging from (\$0.25) in Tier 1 to (\$0.48) in Tier 4, the highest Tier at that time).

²³ See, generally, The Nasdaq Stock Market, Options 7 Pricing Schedule, Section 2 (Professional Member rebates ranging from \$0.20 in Tier 1 to \$0.48 in Tier 6); Cboe BZX Options Fee Schedule, Standard Rates (Professional rebates for Penny Class securities ranging from \$0.25 to \$0.48 for adding liquidity; and Firm, Broker-Dealer, Joint Back Office rebates for Penny Class securities ranging from \$0.25 to \$0.46 for adding liquidity).

Exchange believes that additional Priority Customer and Professional Member volume executed on the Exchange will attract further liquidity to the Exchange, which in turn will benefit all market participants.

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

The Exchange does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed change to lower the volume threshold for the alternative volume criteria for certain Maker rebates for Professional Members should continue to encourage the provision of liquidity that enhances the quality of the Exchange's market and increase the number of trading opportunities on the Exchange for all participants who will be able to compete for such opportunities. Similarly, the Exchange believes that the proposed change to lower the volume threshold for the alternative volume criteria for the lower Taker fee for Professional Members' Firm origin should continue to encourage the provision of liquidity that enhances the quality of the Exchange's market and increase the number of trading opportunities on the Exchange for all participants who will be able to compete for such opportunities. These proposed changes should enable the Exchange to continue to attract and compete for Professional Member and Priority Customer order flow with other exchanges. However, this competition does not create an undue burden on competition but rather offers all market participants the opportunity to receive the benefit of competitive pricing.

The Exchange believes the proposed Maker rebate adjustment is intended to keep the Exchange's rebates highly competitive with those of other exchanges, and to encourage liquidity and should enable the Exchange to continue to attract and compete for order flow with other exchanges. The Exchange notes that it operates in a highly competitive market in which market

participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its rebates and fees to remain competitive with other exchanges and to attract order flow. The Exchange believes that the proposed rule changes reflect this competitive environment because the proposal modifies the Exchange's fees in a manner that encourages market participants to continue to provide liquidity and to send order flow to the Exchange.

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,²⁴ and Rule 19b-4(f)(2)²⁵ 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:

²⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

²⁵ 17 CFR 240.19b-4(f)(2).

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-2022-42.

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-2022-42. 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-2022-42, 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.²⁶

J. Matthew DeLesDernier,
Deputy Secretary.

²⁶ 17 CFR 200.30-3(a)(12).