

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-96546; File No. SR-PEARL-2022-59)

December 20, 2022

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

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 December 9, 2022 MIAX PEARL, LLC ("MIAX Pearl" or the "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 to amend the fee schedule (the "Fee Schedule") applicable to MIAX Pearl Equities, an equities trading facility of the Exchange.

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 establish a \$200 monthly Membership Fee for Equity Members of the Exchange. The Exchange proposes to assess the monthly Membership Fee to each active Equity Member at the close of business on the first day of each month. The Exchange proposes to specify within the Fee Schedule that an active membership means any month the Equity Member is certified in the membership system and the Equity Member is credentialed to use one or more ports in the production environment. For example, the monthly Membership Fee for January 2023 will be assessed to all active Equity Members at the close of business on January 2, 2023, the first business day of the month. This filing and the proposed fee amount (\$200 per month per Equity Member) are identical to a recent monthly Membership fee adopted by MEMX, LLC (“MEMX”). The Exchange is not proposing anything different than what was adopted in the MEMX filing.

The Exchange also proposes that if an Equity Member is pending a voluntary termination of rights as a Member pursuant to Exchange Rule 206 prior to the time any monthly Membership Fee will be assessed (i.e., the close of business on January 2, 2023), and the Equity Member does not utilize the facilities of the Exchange while such voluntary termination of rights is pending, then the Equity Member will not be obligated to pay the monthly Membership Fee, as such Member will not be considered to have an “active” membership. The Exchange believes this to be appropriate because there are several pre-conditions before a voluntary resignation shall take effect pursuant to Exchange Rule 206. This is also similar to the MEMX filing to adopt the MEMX monthly Membership fee.

As proposed, the monthly Membership Fee for an Equity Member will not be pro-rated, which the Exchange believes is reasonable based on the frequency that the proposed fee would be assessed (i.e., monthly instead of applying to a longer period) and the relatively low proposed fee amount of \$200 for the monthly Membership Fee. This is also similar to the MEMX filing to adopt the MEMX monthly Membership fee. The Exchange does not presently contemplate proposing any application fees, trading rights or trading permit fees, market participant identifier (“MPID”) fees or so-called “headcount” fees. The Exchange further notes that it is separately filing a proposal to amend fees for physical connectivity and ports (with the same implementation date as the proposed changes in this filing).

The Exchange proposes to establish the monthly Membership fee as Section 4), Membership Fees, and move current Section 4), Additional Fees, to new Section 5 in the Fee Schedule.

Implementation Date

The Exchange proposes to implement the proposed Membership Fee beginning January 1, 2023.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,³ in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,⁴ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Equity Members and other persons using its facilities and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

³ 15 U.S.C. 78f.

⁴ 15 U.S.C. 78f(b)(4) and (5).

The Exchange believes that there is value in becoming an Equity Member of the Exchange and that the proposed monthly Membership Fee is reasonable. The proposed monthly Membership Fee is identical in amount and the way the Exchange proposes to assess it as the monthly Membership fee recently adopted by MEMX.⁵ The proposed monthly Membership fee is also lower than or comparable to the membership fees imposed by several other national securities exchanges that charge such fees.⁶ Moreover, insofar as the Exchange does not charge – nor does it presently contemplate charging – application fees, trading rights fees, trading permit fees, or fees for multiple MPIDs, the comparative price of membership is less or significantly less than comparative prices at other exchanges. The Exchange also does not charge – nor does it presently contemplate charging – so-called “headcount fees,” e.g., fees charged for each Form U-4 filed for registration of a representative or a principal or the transfer or re-licensing of such personnel,⁷ further highlighting the reasonableness of the proposed monthly Membership Fee.

⁵ See supra note 4 [sic].

⁶ See, e.g., the New York Stock Exchange LLC (“NYSE”) annual trading license fee for member organizations ranges from approximately \$2,080 per month to \$4,165 per month based on the type of member organization and number of trading licenses. See NYSE Price List 2022, Trading Licenses, page 23, available at: https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf (last visited December 6, 2022). The Nasdaq Stock Market LLC (“Nasdaq”) annual membership fee is \$3,000 plus a monthly \$1,250 trading rights fee (together with the annual membership fee, totaling \$18,000 per year). See “NASDAQ Membership Fees,” Nasdaq Price List, available at: <http://nasdaqtrader.com/Trader.aspx?id=PriceListTrading2#membership> (last visited December 6, 2022). See also Securities Exchange Act Release No. 81133 (July 12, 2017), 82 FR 32904 (July 18, 2017) (SR-NASDAQ-2017-065) (discussing the reasonableness of Nasdaq’s fees). Finally, Cboe BZX Exchange, Inc. (“Cboe BZX”) charges an annual membership fee of \$2,500 plus an additional fee of \$350 per month for each additional MPID a member maintains other than their first (i.e., an annual fee of \$4,200 per additional MPID). See “Membership Fees” and “Market Participant Identifier (‘MPID’) Fees” sections of the Cboe BZX Fee Schedule, available at: Cboe BZX Fee Schedule (last visited December 6, 2022).

⁷ See, e.g., “NASDAQ Membership Fees,” supra note 11 [sic] (\$55 for each Form U-4 filed for the registration of a Representative or Principal, and \$55 for each Form U-4 filed

The Exchange believes that the proposed monthly Membership Fee is not unfairly discriminatory because it would be assessed equally across all Equity Members or firms that seek to become Equity Members. The Exchange believes that the proposed monthly Membership Fee is not unfairly discriminatory because no broker-dealer is required to become a member of the Exchange. Instead, many market participants awaited the Exchange growing to a certain percentage of market share before they would join as an Equity Member of the Exchange. In addition, many market participants still have not joined the Exchange despite the Exchange's growth in one year to more than 1% of the overall equities market share. To illustrate, the Exchange currently has 49 Equity Members.⁸ However, based on publicly available information regarding a sample of the Exchange's competitors, MEMX has 66 members, NYSE has 142 members, Cboe BZX has 140 members, and Investors Exchange LLC ("IEX") has 133 members.⁹

Accordingly, the vigorous competition among national securities exchanges provides many alternatives for firms to voluntarily decide whether membership to the Exchange is appropriate and worthwhile, and no broker-dealer is required to become a member of the Exchange. Specifically, neither the trade-through requirements under Regulation NMS nor broker-dealers' best execution obligations require a broker-dealer to become a member of every

for the transfer or re-licensing of a Representative or Principal).

⁸ See MIAAX Pearl Equities Exchange Member Directory, available at https://www.miaaxoptions.com/sites/default/files/page-files/MIAAX_Pearl_Equities_Exchange_Members_11012022.pdf (last visited December 6, 2022).

⁹ See supra note 4 [sic]; see also NYSE Membership Directory, available at: <https://www.nyse.com/markets/nyse/membership>; Cboe BZX Form 1 filed November 19, 2021, available at: <https://www.sec.gov/Archives/edgar/vpr/2100/21009368.pdf>; IEX Current Members list, available at: <https://exchange.iex.io/resources/trading/current-membership/>.

exchange. The Exchange acknowledges that competitive forces may require certain broker-dealers to be members of all equities exchanges. However, the Exchange believes that the proposed fee of \$200 as a monthly Membership Fee is reasonable, equitably allocated and not unfairly discriminatory, even for a broker-dealer that deemed it necessary to join the Exchange for business purposes, as those business reasons should presumably result in revenue capable of covering the proposed fee.

The Exchange further believes that the proposed fee would be an equitable allocation of reasonable dues, fees, and other charges among its Equity Members and issuers and other persons using its facilities, and are not unfairly discriminatory. As the Commission noted in its Concept Release Concerning Self-Regulation:

The Commission to date has not issued detailed rules specifying proper funding levels of [self-regulatory organization (“SRO”)] regulatory programs, or how costs should be allocated among the various SRO constituencies. Rather, the Commission has examined the SROs to determine whether they are complying with their statutory responsibilities. This approach was developed in response to the diverse characteristics and roles of the various SROs and the markets they operate. The mechanics of SRO funding, including the amount of revenue that is spent on regulation and how that amount is allocated among various regulatory operations, is related to the type of market that an SRO is operating. Thus, each SRO and its financial structure is, to a certain extent, unique. While this uniqueness can result in different levels of SRO funding across markets, it also is a reflection of one of the primary underpinnings of the National Market System. Specifically, by fostering an environment in which diverse markets with diverse business models compete within a unified National Market System, investors and market participants benefit.¹⁰

For the reasons discussed above, the Exchange submits that the proposal satisfies the requirements of Sections 6(b)(4) and 6(b)(5) of the Act¹¹ in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Equity Members and other

¹⁰ See Securities Exchange Act Release No. 50700 (November 22, 2004), 69 FR 71255, 71267-68 (December 8, 2004) (File No. S7-40-04).

¹¹ 15 U.S.C. 78f(b)(4) and (5).

persons using its facilities and is not designed to unfairly discriminate between customers, issuers, brokers, or dealers. Effective regulation is central to the proper functioning of the securities markets. Recognizing the importance of such efforts, Congress decided to require national securities exchanges to register with the Commission as self-regulatory organizations to carry out the purposes of the Act. The Exchange therefore believes that it is critical to ensure that regulation is appropriately funded. The monthly Membership Fee is expected to provide a source of funding towards the Exchange's costs related to onboarding Equity Members and providing ongoing support.

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

In accordance with Section 6(b)(8) of the Act,¹² 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. The Exchange's proposed Membership Fee will be lower than the cost of membership on other exchanges,¹³ and therefore, may stimulate intramarket [sic] competition by attracting additional firms to become Equity Members on the Exchange or at least should not deter interested participants from joining the Exchange. In addition, membership fees are subject to competition from other exchanges. Accordingly, if the changes proposed herein are unattractive to market participants, it is likely the Exchange will see a decline in membership as a result.

The Exchange believes that the proposed fee change will not impact intermarket [sic] competition because it will apply to all Equity Members equally. The Exchange operates in a highly competitive market in which market participants can determine whether or not to join the

¹² 15 U.S.C. 78f(b)(8).

¹³ See supra note 11 [sic].

Exchange based on the value received compared to the cost of joining and maintaining membership on the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or 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,¹⁴ and Rule 19b-4(f)(2)¹⁵ 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](mailto:rule-comments@sec.gov). Please include File Number SR-PEARL-2022-59 on the subject line.

¹⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁵ 17 CFR 240.19b-4(f)(2).

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-2022-59. 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 Web site (<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-2022-59 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.¹⁶

Sherry R. Haywood,
Assistant Secretary.

¹⁶ 17 CFR 200.30-3(a)(12).