

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-90563; File No. SR-PEARL-2020-30)

December 3, 2020

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing of a Proposed Rule Change to Amend the Exchange's By-Laws in Connection with an Equity Rights Program

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 November 24, 2020, 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 a proposal to amend the Exchange's By-Laws.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 proposes to amend certain sections of its By-Laws to: (i) correspond with an Equity Rights Program (“ERP”) recently established by the Exchange;³ and (ii) make non-substantive changes to the current By-Laws.

On August 14, 2020, the Commission approved a proposed rule change to adopt rules governing the trading of equity securities on the Exchange (the platform for the trading of equity securities is referred to herein as “MIAX PEARL Equities”).⁴ This filing corresponds with the recently implemented ERP pursuant to which units representing the right to acquire equity in the Exchange’s parent holding company, Miami International Holdings, Inc., were issued to

³ See Securities Exchange Act Release No. 89730 (September 1, 2020), 85 FR 55530 (September 8, 2020) (SR-PEARL-2020-10) (“ERP Notice”). This filing is also based on a past filing by the Exchange’s affiliate, Miami International Securities Exchange, LLC (“MIAX”). See Securities Exchange Act Release Nos. 71541 (February 12, 2014), 79 FR 9572 (February 19, 2014) (SR-MIAX-2013-58) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Amend the Exchange’s ByLaws); and 77876 (May 20, 2016), 81 FR 33283 (May 25, 2016) (SR-MIAX-2016-08) (collectively, the “MIAX Approval Orders”).

⁴ See Securities Exchange Act Release Nos. 88132 (February 6, 2020), 85 FR 8053 (February 12, 2020) (SR-PEARL-2020-03) (Notice of Filing of a Proposed Rule Change to Adopt Rules Governing the Trading of Equity Securities); and 89563 (August 14, 2020), 85 FR 51510 (August 20, 2020) (Order Approving Proposed Rule Change to Adopt Rules Governing the Trading of Equity Securities).

participating Members⁵ in exchange for the prepayment of certain ERP Exchange Fees⁶ for trading equity securities on MIAX PEARL Equities and the achievement of certain liquidity volume thresholds on MIAX PEARL Equities over a 42-month period. This filing amends the By-Laws to the extent necessary to incorporate rights to participating Members in an ERP to appoint representation to the MIAX PEARL Board.

Article I, Definitions.

The Exchange proposes to amend the By-Laws to provide definitions for key terms used to incorporate provisions related to the ERP. Specifically, the Exchange proposes the following definitions:

- “ERP Agreement” means the agreement between the Exchange’s parent holding company, Miami International Holdings, Inc., and ERP Members dated September 11, 2020_pursuant to which Units were issued.
- “ERP Director” means a MIAX PEARL Equities Industry Director who has been nominated by an ERP Member and appointed to the Board of Directors.

⁵ The term “Member” means an individual or organization that is registered with the Exchange pursuant to Chapter II of the Exchange’s 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.

⁶ The ERP Exchange fees under the Program consist of: (a) transaction fees as set forth in Section 1)a of the MIAX PEARL Options Fee Schedule; (b) membership fees as set forth in Section 3 of the MIAX PEARL Options Fee Schedule; (c) system connectivity fees as set forth in Section 5 of the MIAX PEARL Options Fee Schedule; (d) market data fees as set forth in Section 6 of the MIAX PEARL Options Fee Schedule; (a) transaction fees as set forth under Section 1)a) of the MIAX PEARL Equities Fee Schedule; (b) system connectivity fees as set forth under Section 2) of the MIAX PEARL Equities Fee Schedule; and (c) market data fees as set forth under Section 3) of the MIAX PEARL Equities Fee Schedule (collectively, the “ERP Exchange Fees”). The Exchange notes that proprietary real-time market data will be provided free of charge for a period of time.

- “ERP Member” means an Exchange Member who acquired Units pursuant to an ERP Agreement sufficient to acquire an ERP Director or an Observer position.
- “Measurement Period” means the time period over which Units are vested.
- “MIAX PEARL Equities” means the market of the Exchange on which equity securities are traded.
- “Observer” has the meaning set forth in Article II, Section 2.2 of the By-Laws.
- “Performance Criteria” means the trades on MIAX PEARL Equities in an amount equal to a percentage of the average daily volume for National Market System securities on MIAX PEARL Equities as reported by the Consolidated Tape Association (CTA) and Unlisted Traded Privileges (UTP) Plans, or any successor plans, for a specified Measurement Period in an amount such that the ERP Member earns Units during such specified Measurement Period and as more fully set forth in the ERP Agreement.
- “Unit” means the securities issued pursuant to the ERP Agreement.

The Exchange also proposes to delete the definition of the term “Exchange Contract” from the By-Laws because it is no longer used. The term “Exchange Contract” is currently defined as “a contract that is then listed for trading by the Exchange or that is contemplated by the then current business plan of the Company to be listed for trading by the Exchange within ninety (90) days following such date.”

The Exchange proposes to renumber the existing definitions accordingly to accommodate the proposed additions and deletions.

Article II, Section 2.2, Composition of the Board.

The Exchange proposed to amend the title of Article II, Section 2.2 to include reference to Observer Rights. The Exchange also proposes to amend Article II, Section 2.2(b)(i) to

provide that ERP Directors will be included in the number of Industry Directors for purposes of calculating the composition of the Board. In addition, the Exchange proposes to amend Article II, Section 2.2 (b)(ii) to specify that Member Representative Directors will not include ERP Directors for purposes of calculating the Board composition.

In addition, the Exchange proposes to amend Article II, Section 2.2(e) to replace the existing text with text that provides that an ERP Member has a right to nominate one (1) ERP Director or appoint an Observer to the Board of Directors. If at any time such ERP Member is otherwise able to nominate an ERP Director, but is unable to fill such position as a result of such ERP Member already having a representative on the Board, such ERP Member will have the right to nominate such Director in accordance with amended Article II, Section 2.2(e) upon the resignation or removal of such Director already serving on the Board.⁷ The nominee shall be appointed at the first annual meeting of the Company following the effective date of the By-Law amendment.

The Exchange proposes to adopt paragraph (f) under Article II, Section 2.2. to provide that if an ERP Director position needs to be added pursuant to amended Article II, Section 2.2(e), such ERP Director shall be nominated by the applicable ERP Member and elected by the LLC Member and additional Director positions shall be added and filled at the same time as the election of the new ERP Director, as required to comply with the requirements set forth in Article II, Section 2.2(a) and (b).

The Exchange also proposes to adopt paragraph (g) under Article II, Section 2.2 to provide that, per amended Article II, Section 2.2(e), a person may be invited to attend meetings

⁷ At this time, an ERP Member that is represented by a Member Representative Director may also have an Observer. But, an ERP Member that is represented by an ERP Director may not also have an Observer.

of the Board in a nonvoting Observer capacity as follows. Proposed Article II, Section 2.2(g)(i) would provide that any ERP Member that is not otherwise represented on the Board shall have the right to appoint one individual as an Observer. If the ERP Member is otherwise able to nominate an ERP Director, an Observer appointment would be in lieu of such ERP Director nomination. Proposed Article II, Section 2.2(g)(ii) would provide that the ERP Member's right to appoint an Observer pursuant to proposed Section 2.2(g) shall be perpetual, subject to the provisions of Section 2.3 discussed below. An Observer may not be subject to a statutory disqualification.

Lastly, proposed Article II, Section 2.2(g)(iii) would provide that Observers will have the right to attend all meetings of the Board of Directors in a nonvoting observer capacity and, in this respect, the Company shall give such representative copies of all notices, minutes, consents, and other materials that it provides to its directors at the same time and in the same manner as provided to such Directors; provided, however, that such representative shall agree to hold in confidence and trust and to act in a fiduciary manner with respect to all information so provided; and provided further, that the Company reserves the right to withhold any information and to exclude such representative from any meeting or portion thereof if access to such information or attendance at such meeting could adversely affect the attorney-client privilege between the Company and its counsel or result in disclosure of trade secrets or a conflict of interest.

The Exchange believes these changes are reasonably designed to ensure that the Board of Directors maintains the appropriate composition after the ERP and that Directors and Observers are qualified to represent ERP Members on the Board. The changes will also help to ensure that Directors, ERP Directors, and Observers, are qualified and held to the same restrictions against

statutory disqualification. The Exchange notes that no substantive changes are being proposed to the Board's composition; the Board size will increase, but the current composition will remain.

Lastly, the Exchange proposes to amend the title of Article II, Section 2.2 to refer to Observer Rights and reflect the above-proposed changes.

Article II, Section 2.3, Terms of Office.

The Exchange proposes to amend Article II, Section 2.3(b) to specify that it does not apply to ERP Directors. The Exchange also proposes to adopt paragraph (c) under Article II, Section 2.3 to provide that in the event that an ERP Member (either by itself or its affiliates) who has the right to nominate an ERP Director and which fails to meet its Performance Criteria under the ERP Agreement for three consecutive Measurement Periods such that it only meets the required performance criteria of an ERP Member that may appoint an Observer, then the individual designated by the non-performing ERP Member shall immediately cease to be an ERP Director of the Company and such ERP Member shall cease to have the right to nominate an ERP Director. Such non-performing ERP Member shall continue to maintain Observer rights as set forth in the By-Laws. Notwithstanding the foregoing, in the event that the non-performing ERP Member satisfies the Performance Criteria for a subsequent Measurement Period, then such ERP Member may reappoint an ERP Director at the immediately following annual meeting of the Company. The Exchange believes that it is fair and reasonable to treat non-performing ERP Member's that can nominate an ERP Director differently than non-performing ERP Member's that can only appoint Observers. ERP Members that can nominate ERP Directors have assumed greater performance obligations under the ERP Agreement, and thus even at the non-performing level are entitled to more protections to their representation on the Board than non-performing ERP Members that can only appoint Observers.

The Exchange also proposes to adopt paragraph (d) under Article II, Section 2.3 to provide that an individual ERP Director or Observer position shall be immediately terminated following the transfer of common stock or warrants of the LLC Member acquired pursuant to the ERP Agreement by an ERP Member which, after giving effect to such transfer, results in such ERP Member holding less than 25% of the aggregate number of shares of common stock of the LLC Member issued or issuable pursuant to the Units acquired pursuant to the ERP Agreement collectively.

The Exchange believes these changes regarding Terms of Office are reasonably designed to account for the removal of Directors or Observers of non-performing ERP Members and Members that no longer have a controlling interest in the shares that provided them the right to such appointments.

Article II, Section 2.4, Nomination and Election.

The Exchange proposes to amend Article II, Section 2.4(a) to provide that the Nominating Committee shall nominate to ERP Director positions only those persons whose names have been approved and submitted by the applicable ERP Members having the right to nominate such person. As mentioned above, the LLC Member is then obligated to vote for the nominated ERP Director. The nominee shall be appointed at the first annual meeting of the Company following September 11, 2020, which was the closing date of the ERP established by the Exchange.⁸

Article II, Section 2.8, Vacancies.

The Exchange proposes to adopt paragraph (c) under Article II, Section 2.8 to provide that if an ERP Director position becomes vacant that the applicable ERP Member will retain the

⁸ See ERP Notice, supra note 3.

ability to nominate a person to fill the vacant ERP Director position. To eliminate any potential confusion between the treatment of true vacancies and the non-performance provisions in proposed Article II, Section 2.3(c), the Exchange proposes to specify that proposed Article II, Section 2.8(c) will not apply for a vacancy resulting from an ERP Director position becoming vacant due to a non-performing ERP Member. In the situation of non-performance of an ERP Member, the provisions of proposed Article II, Section 2.3(c) would apply.

Article II, Section 2.9, Removal and Resignation.

The Exchange proposes to amend Article II, Section 2.9 to provide that ERP Directors may only be removed for cause, which shall include, without limitation, such Director being subject to a statutory disqualification.

Article X, Sections 10.3 and 10.4.

The Exchange proposes to amend Article X, Section 10.3 to provide that Observers will be subject to the same participation rights on the Board during meetings pertaining to the self-regulatory function of the Company as other members of the Board. In addition, Article X, Section 10.4 would be amended to provide that Observers will be subject to the same requirements to maintain the confidentiality of all books and records of the Company reflecting confidential information pertaining to the self-regulatory function of the Company.

Miscellaneous Non-Substantive Changes.

In addition to the changes set forth above, the Exchange proposes to make the following non-substantive changes to the current By-Laws. The Exchange proposes to delete dated references to time periods and events that have expired since the proposal of the new By-Laws. Specifically, the Exchange proposes to delete provisions in Article II, Section 2.5, and Article III, Section 3.1(b), regarding Interim Directors and Interim Member Representative Directors

since these appointments have already occurred. Consistent with this change, the Exchange proposes to remove references to Article II, Section 2.5 and Interim Directors and Interim Member Representative Directors from current Article I(x) (proposed to be renumbered as Article I(aa)) and Article II, Section 2.2(b)(i).

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act⁹ in general, and furthers the objectives of Sections 6(b)(1) and 6(b)(5) of the Act¹⁰ in particular, in that it enables the Exchange to be so organized as to have the capacity to carry out the purposes of the Act and to comply, and to enforce compliance by its Members and persons associated with its Members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange; and 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 open market and a national market system and, in general, to protect investors and the public interest. In addition, the proposed change is consistent with Section 6(b)(3) of the Act,¹¹ in that it enables the Exchange to assure a fair representation of its members in the selection of its directors and administration of its affairs and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ 15 U.S.C. 78f(b)(3).

Specifically, the proposed amendments to the By-Laws are reasonably designed to incorporate provisions related to the ERP in a manner that ensures that the Exchange will remain so organized as to have the capacity to carry out the purposes of the Act and to comply, and to enforce compliance by its Members and persons associated with its Members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange. The changes will also help to ensure that Directors, ERP Directors, Observers, and committee members are qualified and held to the same restrictions against statutory disqualification. The proposed ERP Directors will be subject to the same restrictions as current Directors including evaluating proposals with the Company's self-regulatory status in mind, restricting participation in activities where there is a conflict of interest, and requirement to maintain the confidentiality of information related to the Company's self-regulatory function. The proposed Observers will be subject to the same restrictions as current Directors regarding maintaining the confidentiality of information related to the Company's self-regulatory function. However, Observers will not be subject to the same restrictions as current Directors regarding evaluating proposals with the Company's self-regulatory status in mind and restricting participation in activities where there is a conflict of interest. The Exchange believes that treating Observers differently than Directors in these circumstances is reasonable because Observers will not be affirmatively voting on any such proposals in their non-voting observer capacity.

In addition, the Exchange's proposed amendments address other non-substantive revisions to reflect changes since the Commission granted the Exchange's registration as a national securities exchange.

The proposal will continue to assure a fair representation of its Members in that ERP Directors will not affect the current Member Representation Director calculation or process in

any way. The Exchange notes that no substantive changes are being proposed to the Board's composition; the Board size will increase, but the current composition will remain.

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. The proposed changes to the Exchange By-Laws are designed to enable the Exchange to be so organized as to have the capacity to carry out the purposes of the Act and to comply, and to enforce compliance by its Members and persons associated with its Members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange. As such, this is not a competitive filing and thus should not impose any burden on 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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-PEARL-2020-30 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-2020-30. 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-2020-30, 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.¹²

J. Matthew DeLesDernier
Assistant Secretary

¹² 17 CFR 200.30-3(a)(12).