

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-96480; File No. SR-PEARL-2022-54)

December 13, 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

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 November 30, 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”).

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 the Add/Remove Tiered Rebates/Fees set forth in Section 1)a) of the Fee Schedule to lower Taker fees (defined below) in certain Tiers for transactions in Penny Classes (defined below) for the Priority Customer³ origin.

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 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

³ 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.

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.

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

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,

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 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.

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 which are not in the Penny Interval Program (“Non-Penny Classes”), where Members are assessed higher transaction fees and receive higher rebates.

Proposal

The Exchange proposes to amend the Fee Schedule for the Exchange’s options market to modify Taker fees in certain Tiers for options transactions in Penny Classes for the Priority Customer origin. Currently, for options transactions in all Penny Classes (except for symbols SPY, QQQ and IWM)¹¹, the Exchange assesses the following Taker fees for the Priority Customer origin: \$0.50 in Tier 1; \$0.50 in Tier 2; \$0.50 in Tier 3; \$0.49 in Tier 4; \$0.48 in Tier 5; and \$0.47 in Tier 6. The Exchange assesses Taker fees for options transactions in SPY for the Priority Customer origin as follows: \$0.46 in Tier 1; \$0.46 in Tier 2; \$0.45 in Tier 3; \$0.44 in Tier 4; \$0.43 in Tier 5; and \$0.42 in Tier 6. The Exchange also assesses Taker fees for options

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).

¹¹ See Fee Schedule, Section 1)a), note “*”.

transactions in QQQ and IWM for the Priority Customer origin as follows: \$0.50 in Tier 1; \$0.50 in Tier 2; \$0.48 in Tier 3; \$0.47 in Tier 4; \$0.46 in Tier 5; and \$0.45 in Tier 6.

The Exchange now proposes to lower the Taker fees in certain Tiers for options transactions in Penny Classes for the Priority Customer origin. In particular, the Exchange proposes to lower the Taker fees for options transactions in all Penny Classes, excluding SPY, QQQ and IWM, for the Priority Customer origin as follows: from \$0.50 to \$0.48 in Tier 1; from \$0.50 to \$0.48 in Tier 2; from \$0.50 to \$0.48 in Tier 3; and from \$0.49 to \$0.48 in Tier 4. The Exchange also proposes to lower the Taker fees for options transactions in QQQ and IWM for the Priority Customer origin as follows: from \$0.50 to \$0.48 in Tier 1 and from \$0.50 to \$0.48 in Tier 2. The purpose of these changes is for business and competitive reasons in order to attract additional Penny Class volume from Members by lowering certain Taker fees in options classes that are typically among the most actively traded symbols,¹² which should benefit all Exchange participants by providing more trading opportunities and tighter spreads.

Implementation

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

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act¹³ in general, and furthers the objectives of Section 6(b)(4) of the Act,¹⁴ in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange

¹² See supra note 10 (adopting the Penny Program that applies to the 363 most actively traded multiply listed option classes).

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(4).

Members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

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.”¹⁵

There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, as of November 28, 2022, no single exchange has more than approximately 12-13% equity options market share for the month of November 2022.¹⁶ Therefore, no exchange possesses significant pricing power. More specifically, as of November 28, 2022, the Exchange has a market share of approximately 4.47% of executed volume of multiply-listed equity options for the month of November 2022.¹⁷

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

¹⁵ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

¹⁶ See “The market at a glance,” (last visited November 28, 2022), available at <https://www.miaxoptions.com/>.

¹⁷ 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).¹⁸ 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 that its proposal is reasonable because it will lower Taker fees for options transactions in Penny Classes in certain Tiers for Priority Customer orders, which should encourage Members to submit more Priority Customer orders, leading to increased liquidity on the Exchange to the benefit of all market participants by providing more trading opportunities and tighter spreads.

Further, the Exchange believes that it is equitable and not unfairly discriminatory to assess lower Taker fees to Priority Customer orders than to non-Priority Customer orders. A Priority Customer is by definition not a broker or dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).¹⁹ This limitation does not apply to participants on the Exchange whose behavior is substantially similar to that of market professionals, including non-Priority

¹⁸ See Securities Exchange Act Release No. 85304 (March 13, 2019), 84 FR 10144 (March 19, 2019) (SR-PEARL-2019-07).

¹⁹ See Exchange Rule 100.

Customers, MIAX Pearl Market Makers, Firms, and Broker-Dealers, who will generally submit a higher number of orders (many of which do not result in executions) than Priority Customers.

Furthermore, the proposed decrease to Taker fees in Penny Classes for Priority Customer transactions in certain Tiers will encourage Members to send more orders to the Exchange. To the extent that Priority Customer order flow in Penny Classes is increased by the proposal, market participants will increasingly compete for the opportunity to trade on the Exchange, including sending more orders, which will have the potential to be assessed lower fees and higher rebates. The resulting increased volume and liquidity will benefit all Exchange participants by providing more trading opportunities and tighter spreads.

For competitive and business reasons, the Exchange believes that lower Taker fees assessable to Priority Customer transactions in QQQ and IWM options in certain Tiers will encourage Members to execute more volume in QQQ and IWM options on behalf of Priority Customers since they will be assessed reduced fees for Priority Customer orders in those options classes which remove liquidity. The Exchange believes for these reasons that offering the reduced Taker fees for Priority Customer transactions in QQQ and IWM options in certain Tiers is equitable, reasonable and not unfairly discriminatory, and thus consistent with the Act.

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 changes in the Taker fees for the applicable market participants should continue to encourage the provision of liquidity that enhances the quality of the Exchange's market and increases the number of trading opportunities on the Exchange for all participants who will be able to compete for such opportunities. The proposed rule changes

should enable the Exchange to continue to attract and compete for order flow with other exchanges.

The proposed Taker fee decreases are intended to keep the Exchange's fees 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,²⁰ and Rule 19b-4(f)(2)²¹ 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

²⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

²¹ 17 CFR 240.19b-4(f)(2).

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:to-rule-comments@sec.gov). Please include File Number SR-PEARL-2022-54 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-2022-54. 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-2022-54 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.²²

Sherry R. Haywood,
Assistant Secretary.

²² 17 CFR 200.30-3(a)(12).