

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-96905; File No. SR-PEARL-2023-03)

February 13, 2023

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Exchange Rule 2618 to Add Optional Risk Control Settings

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 February 3, 2023, MIAX PEARL, LLC (“MIAX Pearl” or the “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “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 amend Exchange Rule 2618(a)(2) to offer two additional optional risk settings to Equity Members, called the Gross Notional Open and Trade Value and Net Notional Open and Trade Value.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to provide Equity Members additional risk settings when trading equity securities on MIAX Pearl Equities. To help Equity Members manage their risk, the Exchange currently offers risk settings that authorize the Exchange to take automated action if a designated limit for an Equity Member is breached. Such risk settings provide Equity Members with enhanced abilities to manage their risk when trading on the Exchange. The Exchange now proposes to amend Exchange Rule 2618(a)(2) to offer two additional optional risk settings to Equity Members, called the Gross Notional Open and Trade Value and Net Notional Open and Trade Value. Each of these new risk settings seeks to combine certain existing risk settings into a single risk setting and are described below.

Exchange Rule 2618(a)(2) sets forth the specific cumulative risk settings the Exchange offers and include Gross Notional Trade Value, Net Notional Trade Value, Gross Notional Open Value, and Net Notional Open Value.³ Gross Notional Trade Value is a pre-established maximum daily dollar amount for purchases and sales across all symbols, where both purchases and sales are counted as positive values. Net Notional Trade Value is a pre-established maximum daily dollar amount for purchases and sales across all symbols, where purchases

³ See Securities Exchange Act Release Nos. 89971 (September 23, 2020), 85 FR 61053 (September 29, 2022 [sic]) (SR-PEARL-2020-16); 90478 (November 23, 2022 [sic]), 85 FR 76630 (November 30, 2020) (SR-PEARL-2020-26); and 96205 (November 1, 2022), 87 FR 67080 (November 17 [sic], 2022) (SR-PEARL-2022-43).

are counted as positive values and sales are counted as negative values. For purposes of calculating the Gross Notional Trade Value and Net Notional Trade Value, only executed orders are included.

The Gross Notional Open Value is a pre-established maximum daily dollar amount for open buy and sell orders across all symbols, where both open orders to buy and sell are counted as positive values. For purposes of calculating the Gross Notional Open Value, only unexecuted orders are included. The Net Notional Open Value is a pre-established maximum daily dollar amount for open buy and sell orders across all symbols, where open orders to buy are counted as positive values and open orders to sell are counted as negative values. For purposes of calculating the Net Notional Open Value, only unexecuted orders are included, just like the Gross Notional Open Value risk control.

For both the Gross Notional Open Value and Net Notional Open Value risk settings, the open orders calculation only includes Limit Orders and Pegged Orders resting on the MIAX Pearl Equities Book and Limit Orders that have been routed to an away exchange for execution.⁴ Limit Orders and Pegged Orders are included at their limit price. Market Orders are not included.⁵ Each of the above risk settings is completely optional and is not applied where the Equity Member does not set the applicable threshold.

Based on Equity Member demand, the Exchange proposes to adopt the following two additional cumulative risk settings that take into account both trades, as well as open, unexecuted orders, Gross Notional Open and Trade Value and Net Notional Open and Trade Value. The proposed risk settings

⁴ Pegged Orders are not eligible for routing pursuant to Exchange Rule 2617(b). See Exchange Rule 2614(a)(3)(E).

⁵ See Securities Exchange Act Release No. 96205 (November 1, 2022), 87 FR 67080 (November 17 [sic], 2022) (SR-PEARL-2022-43).

combine each of the above two gross calculated risk settings into a single risk control and the two net calculated risk settings also into a single risk setting. Specifically, the Gross Notional Open and Trade Value would be a combination of the Gross Notional Open Value and Gross Notional Trade Value risk settings and include both purchases and sales as well as open buy and sell orders across all symbols. Like the existing gross calculated risk settings, purchases, sales, open orders to buy, and open orders to sell would be counted as positive values and a combination of executed and unexecuted orders would be included. Meanwhile, the Net Notional Open and Trade Value would be a combination of the Net Notional Open Value and Net Notional Trade Value risk settings and also include purchases and sales as well as open buy and sell orders across all symbols. Like the existing net calculated risk settings, where purchases and open orders to buy would be counted as positive values and sales and open orders to sell would be counted as negative values and, like above for the Gross Notional Open and Trade Value risk control, both executed and unexecuted orders would be included.

Each of these above proposed risk settings would be codified under Exchange Rule 2618(a)(2). Proposed Exchange Rule 2618(a)(2)(E) would provide that the “Gross Notional Open and Trade Value” is a pre-established maximum daily dollar amount for purchases and sales, as well as open buy and sell orders across all symbols, where purchases, sales, open orders to buy, and open orders to sell are counted as positive values. Proposed Exchange Rule 2618(a)(2)(E) would further provide that for purposes of calculating the Gross Notional Open and Trade Value, executed and unexecuted orders would be included. Proposed Exchange Rule 2618(a)(2)(F) would provide that the “Net Notional Open and Trade Value” would be a pre-established maximum daily dollar amount for purchases and sales, as well as open buy and sell orders across all symbols, where purchases and open orders to buy are counted as positive values, and sales and

open orders to sell are counted as negative values. Proposed Exchange Rule 2618(a)(2)(F) would further provide that for purposes of calculating the Net Notional Open and Trade Value, executed and unexecuted orders would be included.

Like for both the Gross Notional Open Value and Net Notional Open Value risk settings, the open orders calculation portion of both the proposed Gross Notional Open and Trade Value and Net Notional Open and Trade Value risk settings would only include Limit Orders and Pegged Orders resting on the MIAX Pearl Equities Book and Limit Orders that have been routed to an away exchange for execution.⁶ Limit Orders and Pegged Orders would be included at their limit price. Market Orders would not be included. Like the existing risk settings set for in Exchange Rule 2618(a)(2), each of the proposed risk settings would be completely optional and would not be applied where the Equity Member does not set the applicable threshold.

Exchange Rule 2618(a)(4) provides that an Equity Member that does not self-clear may allocate and revoke⁷ the responsibility of establishing and adjusting the Gross Notional Trade Value, Net Notional Trade Value, Gross Notional Open Value, and Net Notional Open Value risk settings to a Clearing Member⁸ that clears transactions on behalf of the Equity Member, if designated in a manner prescribed by the Exchange. The Exchange proposes that the same

⁶ See Securities Exchange Act Release No. 96205 (November 1, 2022), 87 FR 67080 (November 17 [sic], 2022) (SR-PEARL-2022-43).

⁷ As discussed below, if an Equity Member revokes from its Clearing Member the responsibility of establishing and adjusting the risk settings identified in paragraph (a)(2), the settings applied by the Equity Member would be applicable.

⁸ The term “Clearing Member” refers to a Member that is a member of a Qualified Clearing Agency and clears transactions on behalf of another Member. See Exchange Rule 2620(a). Exchange Rule 2620(a) also outlines the process by which a Clearing Member shall affirm its responsibility for clearing any and all trades executed by the Equity Member designating it as its Clearing Firm, and provides that the rules of a Qualified Clearing Agency shall govern with respect to the clearance and settlement of any transactions executed by the Equity Member on the Exchange.

would be true for the new Gross Notional Open and Trade Value and Net Notional Open and Trade Value risk settings.

By way of background, Exchange Rule 2620(a) allows Clearing Members an opportunity to manage their risk of clearing on behalf of other Equity Members, if authorized to do so by the Equity Member trading on the Exchange. Such functionality is designed to help Clearing Members better monitor and manage the potential risks that they assume when clearing for Equity Members of the Exchange. An Equity Member may allocate or revoke the responsibility of establishing and adjusting the risk settings identified in paragraph (a)(2) of Exchange Rule 2618 to its Clearing Member in a manner prescribed by the Exchange. By allocating such responsibility, an Equity Member cedes all control and ability to establish and adjust such risk settings to its Clearing Member unless and until such responsibility is revoked by the Equity Member. Because the Equity Member is responsible for its own trading activity, the Exchange will not provide a Clearing Member authorization to establish and adjust risk settings on behalf of an Equity Member without first receiving consent from the Equity Member. The Exchange considers an Equity Member to have provided such consent if it allocates the responsibility to establish and adjust risk settings to its Clearing Member in a manner prescribed by the Exchange.

Exchange Rule 2618(a)(3) provides that either an Equity Member or its Clearing Member, if allocated such responsibility pursuant to Exchange Rule 2618(a)(4), may establish and adjust limits for the risk settings provided in Exchange Rule 2618(a)(2). An Equity Member or Clearing Member may establish and adjust limits for the risk settings in a manner prescribed by the Exchange. This includes use of the Exchange's online portal. The online portal page also provides a view of all applicable limits for each Equity Member, which will be made available to the

Equity Member and its Clearing Member, as currently discussed in Exchange Rule 2618(a)(4). The proposed new risk settings would be incorporated into the Exchange's online portal.

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The Exchange does not guarantee that the risk settings in this proposal are sufficiently comprehensive to meet all of an Equity Member's risk management needs. Pursuant to Rule 15c3-5 under the Act,⁹ a broker-dealer with market access must perform appropriate due diligence to assure that controls are reasonably designed to be effective, and otherwise consistent with the rule.¹⁰ Use of the Exchange's risk settings included in Exchange Rule 2618 will not automatically constitute compliance with Exchange or federal rules and responsibility for compliance with all Exchange and SEC rules remains with the Equity Member.

Implementation

Due to the technological changes associated with this proposed change, the Exchange will issue a trading alert publicly announcing the implementation date of the proposed enhancements to its risk settings set forth herein. The Exchange anticipates that the implementation date will be in the second or third quarter of 2023.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Section 6(b)(5),¹² in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to

⁹ 17 CFR § 240.15c3-5.

¹⁰ See Division of Trading and Markets, Responses to Frequently Asked Questions Concerning Risk Management Controls for Brokers or Dealers with Market Access, available at <https://www.sec.gov/divisions/marketreg/faq-15c-5-risk-management-controls-bd.htm>.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Specifically, the Exchange believes the proposed risk settings will remove impediments to and perfect the mechanism of a free and open market and a national market system because they provide additional functionality for an Equity Member to manage its risk. The Exchange notes that the proposed risk settings are entirely optional. The Exchange believes that the proposed risk settings under Exchange Rule 2618(a)(2) are designed to protect investors and the public interest because the proposed additional functionality is a form of risk mitigation that will aid Equity Members and Clearing Members in minimizing their financial exposure and reduce the potential for disruptive, market-wide events. In turn, the introduction of such risk management functionality could enhance the integrity of trading on the securities markets and help to assure the stability of the financial system. The proposed rule change would provide an additional option for Equity Members seeking to further tailor their risk management capability while transacting on the Exchange.

The proposed Gross Notional Open and Trade Value and Net Notional Open and Trade Value risk settings under Exchange Rule 2618(a)(2) would further permit Equity Members and Clearing Members who have a financial interest in the risk settings of Equity Members to better monitor and manage their potential risks, including those assumed by Clearing Members, thereby providing Equity Members and Clearing Members with greater control and flexibility over setting their own risk tolerance and exposure. In addition, the proposed additional risk settings under Exchange Rule 2618(a)(2) could provide Clearing Members, who have assumed certain

risks of Equity Members, greater control over risk tolerance and exposure on behalf of their correspondent Equity Members, if allocated responsibility pursuant to Exchange Rule 2618(a)(4), while also providing an alert system under Exchange Rule 2618(a)(5) that ensures that both Equity Members and Clearing Members are aware of developing issues. As such, the Exchange believes that the proposed risk settings would provide additional means to address potentially market-impacting events, helping to ensure the proper functioning of the market. To the extent a Clearing Member might reasonably require an Equity Member to provide access to its risk settings as a prerequisite to continuing to clear trades on the Equity Member's behalf, the Exchange's sharing of those risk settings directly reduces the administrative burden on participants on the Exchange, including both Clearing Members and Equity Members. Moreover, providing Clearing Members with the ability to see the risk settings established for Equity Members for which they clear fosters efficiencies in the market and removes impediments to and perfects the mechanism of a free and open market and a national market system. The Exchange believes that the proposed new risk settings under Exchange Rule 2618(a)(2) are consistent with the Act, particularly Section 6(b)(5),¹³ because they would foster cooperation and coordination with persons engaged in facilitating transactions in securities and more generally, will protect investors and the public interest, by allowing Equity Members and Clearing Members to better monitor their risk exposure and by fostering efficiencies in the market and removing impediments to and perfect the mechanism of a free and open market and a national market system.

In addition, the proposed Gross Notional Open and Trade Value and Net Notional Open and Trade Value risk settings under proposed Exchange Rule 2618(a)(2)(E) and (F),

¹³ 15 U.S.C. 78f(b)(5).

respectively, are similar to the existing net and gross calculated controls under Exchange Rules 2618(a)(2)(A), (B), (C), and (D) and simply seeks to combine the features of each existing gross and net calculated risk settings into a single risk setting as described above. Proposed Gross Notional Open Value and Net Notional Open Value risk settings under proposed Exchange Rule 2618(a)(2)(E) and (F) are also reasonably designed to provide Equity Members and Clearing Members (if allocated responsibility pursuant to Exchange Rule 2618(a)(4)) additional opportunity to monitor and manage the potential risks of an execution that exceeds their certain risk appetite, as well as to provide Clearing Members with greater control over their risk tolerance and exposure on behalf of their correspondent Equity Members.

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Finally, the Exchange believes that the proposed risk settings do not unfairly discriminate among the Exchange's Equity Members because use of the risk settings is optional and are not a prerequisite for participation on MIAX Pearl Equities. The proposed risk settings are completely voluntary and, as they relate solely to optional risk management functionality, no Equity Member is required or under any regulatory obligation to utilize them.

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 that is not necessary or appropriate in furtherance of the purposes of the Act. In fact, the Exchange believes that the proposal may have a positive effect on competition because it would provide Equity Members and their Clearing Members additional means to monitor and control risk, thereby potentially increasing confidence in the proper functioning of the markets and contribute to additional competition among trading venues and broker-dealers. Rather than impede competition, the proposal is designed to facilitate more robust risk management by Equity Members and Clearing

Members, which, in turn, could enhance the integrity of trading on the securities markets and help to assure the stability of the financial system. The proposal would impose no burden on intra-market competition because use of the proposed risk settings is optional and each risk setting is available to all Equity Members equally.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act¹⁴ and Rule 19b-4(f)(6)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.

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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-2023-03 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-2023-03. 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 such 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-2023-03 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

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¹⁶ 17 CFR 200.30-3(a)(12).