

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-99203; File No. SR-PEARL-2023-71)

December 18, 2023

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Exchange Rule 2615(d) to Eliminate the Contingent Open

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 December 14, 2023, MIAX PEARL, LLC (“MIAX Pearl” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I and II 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 proposes to amend Exchange Rule 2615(d) regarding the Contingent Open performed on the Exchange’s equity trading platform (referred to herein as “MIAX Pearl Equities”).

The text of the proposed rule change is available on the Exchange’s website at <https://www.miaxglobal.com/markets/us-equities/pearl-equities/rule-filings>, 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 Exchange proposes to amend Exchange Rule 2615(d) regarding the Contingent Open performed on MIAX Pearl Equities. In sum, the Exchange proposes to amend Exchange Rule 2615(d) to no longer provide for a Contingent Open at 9:45 a.m. Eastern Time. As amended, Exchange Rule 2615(d) would instead provide that the Exchange would perform its Opening Process after the security begins trading on the primary listing market at any time during the trading day. The Exchange also proposes to make a corresponding change to remove a reference to the Contingent Open in the definition of Regular Trading Session in Exchange Rule 1901. These changes are described in more detail below.

Background

Exchange Rule 2615 sets forth the Exchange’s Opening Process and Contingent Open. Each trading day, the Exchange begins trading in an equities security by performing its Opening Process after the start of Regular Trading Hours³ by matching eligible buy and sell orders at the midpoint of the National Best Bid and Offer (“NBBO”),⁴ as described below. Prior to the beginning of Regular Trading Hours,⁵ Users⁶ who wish to participate in the Opening Process

³ The term “Regular Trading Hours” means “the time between 9:30 a.m. and 4:00 p.m. Eastern Time.” See Exchange Rule 1901.

⁴ The term “NBBO” means “the national best bid and offer.” See Exchange Rule 1901.

⁵ According to Exchange Rule 2600(a), Users may begin to enter orders starting at 7:30 a.m. Eastern Time.

⁶ The term “User” means “any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Exchange Rule 2602.” See Exchange Rule 1901.

may enter orders to buy or sell that are designated as Regular Trading Hours Only (“RHO”).⁷ Pursuant to Exchange Rule 2615(a), only orders that include a time-in-force of RHO may participate in the Opening Process. Orders designated as Post Only,⁸ Intermarket Sweep Orders, (“ISOs”),⁹ include a Minimum Execution Quantity instruction,¹⁰ and orders that include a time-in-force other than RHO are not eligible to participate in the Opening Process. Market Orders¹¹ may include a time-in-force of Immediate-or-Cancel (“IOC”),¹² and are, therefore, not eligible to participate in the Opening Process. Meanwhile, Limit Orders,¹³ Primary Peg Orders,¹⁴ and Midpoint Peg Orders¹⁵ that include a time-in-force of RHO are eligible to participate in the Opening Process. All Self-Trade-Protection (“STP”) modifiers, as described in Exchange Rule 2614(f), are honored during the Opening Process.

Exchange Rule 2615(b) provides that during the Opening Process, the Exchange attempts to match eligible buy and sell orders at the midpoint of the NBBO. All orders eligible to trade at the midpoint are processed in time sequence, beginning with the order with the oldest timestamp. The Opening Process concludes when no remaining orders, if any, can be matched at the midpoint of the NBBO. At the conclusion of the Opening Process, the unexecuted portion of orders that were eligible to participate in the Opening Process are placed on the MIAX PEARL

⁷ Exchange Rule 2614(b)(2).

⁸ Exchange Rule 2614(c)(2).

⁹ Exchange Rule 2614(d).

¹⁰ Exchange Rule 2614(c)(7).

¹¹ Exchange Rule 2614(a)(2).

¹² Exchange Rule 2614(b)(1). Market Orders may include a time-in-force of RHO solely when coupled with the PAC routing option for purposes of routing away to participate in the primary listing market’s opening or re-opening process and will continue to not be eligible to participate in the Exchange’s Opening Process. See Exchange Rule 2617(b)(5)(ii).

¹³ Exchange Rule 2614(a)(1).

¹⁴ Exchange Rule 2614(a)(3)(i)(B) [sic].

¹⁵ Exchange Rule 2614(a)(3)(i)(A) [sic].

Equities Book¹⁶ in time sequence, cancelled, executed, or routed to away Trading Centers¹⁷ in accordance with the terms of the order.

Pursuant to Exchange Rule 2615(c), the Exchange calculates the midpoint of the NBBO as follows. When the primary listing exchange is the New York Stock Exchange LLC (“NYSE”) or NYSE American LLC (“NYSE American”), the Opening Process is priced at the midpoint of the: (i) first NBBO subsequent to the first reported trade and first two-sided quotation on the primary listing exchange after 9:30:00 a.m. Eastern Time; or (ii) then prevailing NBBO when the first two-sided quotation is published by the primary listing exchange after 9:30:00 a.m. Eastern Time, but before 9:45:00 a.m. Eastern Time if no first trade is reported by the primary listing exchange within one second of publication of the first two-sided quotation by the primary listing exchange. For any other primary listing exchange, such as The Nasdaq Stock Market LLC (“Nasdaq”), NYSE Arca, LLC (“NYSE Arca”), and Cboe BZX Exchange, Inc. (“Cboe BZX”), the Opening Process is priced at the midpoint of the first NBBO subsequent to the first two-sided quotation published by the primary listing exchange after 9:30:00 a.m. Eastern Time.

Exchange Rule 2615(d) describes the Contingent Open and provides that if the conditions to establish the price of the Opening Process described above do not occur by 9:45:00 a.m. Eastern Time, the Exchange will conduct a Contingent Open and match all orders eligible to participate in the Opening Process at the midpoint of the then prevailing NBBO. Exchange Rule 2615(d) further provides that if the midpoint of the NBBO is not available for the Contingent Open, all orders are handled in time sequence, beginning with the order with the oldest

¹⁶ The term “MIAX Pearl Equities Book” means the electronic book of orders in equity securities maintained by the System. See Exchange Rule 1901.

¹⁷ The term “Trading Center” has the same meaning as in Rule 600(b)(82) of Regulation NMS. See Exchange Rule 100.

timestamp, and are placed on the MIAX PEARL Equities Book, cancelled, executed, or routed to away Trading Centers in accordance with the terms of the order.

Proposed Change

The Exchange proposes to amend Exchange Rule 2615(d) to no longer provide for a Contingent Open at 9:45 a.m. Eastern Time. Instead, the Exchange would not open trading in an equity security until that equity security began trading on the primary listing market and the conditions to establish the opening price set forth under Exchange Rule 2615(c) described above occur. At such time, the Exchange will perform its Opening Process and match all eligible orders at the midpoint of the NBBO, if any, and feed any unexecuted orders onto the MIAX Pearl Equities Book in time sequence, as described above. The Opening Process may occur anytime during Regular Trading Hours, including at or after 9:45 a.m. Eastern Time.

The Exchange initially adopted the Contingent Open under Exchange Rule 2615(d) as part of its proposal to adopt rules governing the trading of equity securities on MIAX Pearl Equities.¹⁸ The initial intent was to align Exchange Rule 2615 with similar rules and functionality available on other equities exchanges. The other exchanges on which the Exchange based Rule 2615(d) are non-primary listing exchanges that, unlike the Exchange, offer an early trading session.¹⁹ The Exchange currently only offers a Regular Trading Session.²⁰ Normally, an early trading session ends and a regular trading session begins when a security is opened for trading on that market. On a non-primary listing market like on which the Exchange based its

¹⁸ See Securities Exchange Act Release No. 89563 (August 14, 2020), 85 FR 51510 (August 20, 2020) (SR-PEARL-2020-03) (adopting rules for MIAX Pearl Equities including Exchange Rule 2615(d)).

¹⁹ See, e.g., Cboe EDGX Exchange Rules 11.1(a)(1) and 11.7(d), and Cboe EDGA Exchange, Inc. Rules 11.1(a)(1) and 11.7(d).

²⁰ The term “Regular Trading Session” means “the time between the completion of the Opening Process or Contingent Open as defined in Exchange Rule 2615 and 4:00 p.m. Eastern Time.” See Exchange Rule 1901.

Rules, this requires the security is to be [sic] open for trading on the primary listing market.

Where a security has not begun to trade on the primary listing market, a Contingent Open serves an important purpose of prescribing an end to the early trading session and beginning of the regular trading session on that non-primary listing exchange. A Contingent Open allows a non-primary listing exchange that provides an early trading session to transition to a regular trading session in a timely manner where a security has not opened for trading on the primary listing market.²¹

The Exchange currently does not offer an early trading session and, therefore, the Contingent Open does not serve as a transition from an early trading session to a regular trading session. A Contingent Open simply allows the Exchange to trade a security when that security has not yet opened on the primary listing market. Once open on the primary listing market, the market for that security may be more robust and the security is likely trading at prices that more closely resemble its value due to that security having been subject to the primary listing market's opening auction process. Therefore, in the absence of an early trading session, the Exchange believes it is not necessary for it perform a Contingent Open at 9:45 a.m. Eastern Time. Instead, the Exchange believes it is appropriate for it to wait for a security to be trading on the primary listing market before it also begins to trade that security. The Exchange believes this could result in eligible orders being matched in the Opening Process at a midpoint of the NBBO that better reflects the security's trading characteristics and value.

²¹ See, e.g., Securities Exchange Act Release Nos. 72676 (July 25, 2014), 79 FR 44520 (July 31, 2014) (Notice); and 73468 (October 29, 2014), 79 FR 65450 (November 4, 2014) SR-EDGX-2014-18 (Notice of Filing of Amendment Nos. 1 and 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 3, To Amend EDGX Rule 1.5 and Chapter XI Regarding Current System Functionality Including the Operation of Order Types and Order Instructions) (SR-EDGX-2014-18).

In the Exchange’s experience, most securities are open by 9:45:00 a.m. Eastern Time and the Exchange performs its Opening Process and is trading practically the entire market. However, at times, a security may not open by 9:45:00 a.m. This is common in less liquid securities. In these cases, the Exchange would not begin to trade a security if and until that security opens for trading on the primary listing market.²²

As a result of the proposed changes, Exchange Rule 2615(d) would be amended to no longer provide for a Contingent Open. Instead, Exchange Rule 2615(d) would provide that “[t]he Exchange will perform the Opening Process at any time during Regular Trading Hours when the conditions to establish the price of the Opening Process set forth under paragraph (c) [of Exchange Rule 2615] occur.”

Lastly, the Exchange proposes to make a corresponding change to remove a reference to the Contingent Open in the definition of Regular Trading Session in Exchange Rule 1901. Currently, the term “Regular Trading Session” shall mean the time between the completion of the Opening Process or Contingent Open as defined in Exchange Rule 2615 and 4:00 p.m. Eastern Time. The Exchange proposes to remove the reference to the Contingent Open so that the Regular Trading Session would now be from the time of the completion of the Opening Process as defined in Exchange Rule 2615 and 4:00 p.m. Eastern Time.

Implementation

The Exchange will implement the proposed changes to Exchange Rule 2615(d) on the effective date of this proposed rule change. The Exchange will issue a Regulatory Alert announcing the exact implementation date of this proposal.

²² Should the Exchange seek to adopt an early trading session in the future, it anticipates that it would also seek to readopt a Contingent Opening Process at that time to set a time at which a security would transition from the early to regular trading sessions where it has not begun trading on the primary listing market. The Exchange will submit a filing with the Commission pursuant to Section 19(b)(1) should it decide to adopt an early trading session in the future.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,²³ in general, and furthers the objectives of Section 6(b)(5),²⁴ in particular, because it is designed to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)²⁵ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As discussed above, the Exchange initially adopted the Contingent Open to align its rule with similar functionality available at other equities exchanges.²⁶ These other exchanges on which the Exchange based Rule 2615(d) currently offer early trading sessions,²⁷ while the Exchange does not. On these exchanges, a Contingent Open serves as the end to the early trading session and beginning of the regular trading session. As discussed above, the Exchange believes it is not necessary for it perform a Contingent Open at 9:45 a.m. Eastern Time. The Exchange does not currently offer an early trading session and does not have a need for a Contingent Open to serve as a transition to its Regular Trading Session. Instead, the Exchange would prefer to wait to perform its Opening Process until the security begins to trade on the primary listing market before it also begins to trade that security. As noted above, the Exchange matches orders during its Opening Process at the midpoint of the NBBO. The Exchange believes that the midpoint of the NBBO present after the security is opened by the primary listing

²³ 15 U.S.C. 78f(b).

²⁴ 15 U.S.C. 78f(b)(5).

²⁵ Id.

²⁶ See supra note 18.

²⁷ See supra note 19.

exchange may better reflect the true market for the security due to increased liquidity and improved market quality. Therefore, the Exchange believes the proposal promotes just and equitable principles of trade, and removes impediments to and perfects the mechanism of a free and open market and a national market system because a security might be trading at prices that are more in-line with its normal trading behavior.

The proposed rule change would also not permit unfair discrimination between customers, issuers, brokers, or dealers because no User would be able to trade the security until the Exchange performs its Opening Process as described herein. The proposal is not designed to target any single type of market participant. It is simply intended to amend Exchange Rule 2615(d) to no longer provide for a Contingent Open. Should the Exchange begin to offer an early trading session, the Contingent Open Process would serve as a transition period from the early to regular trading sessions, as it does today on other markets. The Exchange believes that, in the meantime, it may benefit all market participants for the Exchange to wait to trade a security until that security is opened by the primary listing exchange where that security's market may be more robust.

The Exchange is not aware of any rule or regulation that requires an exchange to perform a Contingent Open or trade all securities for a full trading day. Should the Exchange seek to adopt an early trading session in the future, it anticipates that it would also seek to readopt a Contingent Open to set a time at which a security would transition from the early to regular trading sessions where it has not begun trading on the primary listing market.

Lastly, the Exchange's proposal to make a corresponding change to remove a reference to the Contingent Open in the definition of Regular Trading Session in Exchange Rule 1901 remove impediments to and perfect the mechanism of a free and open market and a national

market system because it would ensure the Exchange's rules are clear and continue to not include an ambiguities and references that could cause potential investor confusion.

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

The Exchange does not believe the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Specifically, the Exchange does not believe the proposed rule change would impose an undue burden on intramarket competition on the Exchange because all Users would be impacted equally. No User would be able to trade an equity security on the Exchange until that security is opened by the primary listing market and the Exchange conducts its Opening Process. Other exchanges simply begin trading equity securities at 9:30:00 a.m. Eastern Time regardless of whether the security was opened by the primary listing exchange.²⁸ Meanwhile, as noted above, other exchanges employ a contingent open at 9:45 a.m. Eastern Time.²⁹ Market participants that wish to trade between 9:30 a.m. Eastern Time and the time the security is opened by the primary listing exchange may send their orders to these exchanges. Therefore, the proposed rule change should not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

In addition, the Exchange does not believe the proposed rule change would impose an undue burden on intermarket competition between exchanges. The Exchange is not aware of any rule or regulation that requires an exchange to perform a Contingent Open or trade all securities for a full trading day. The Exchange simply proposes to wait until an equity security is open for trading by the primary listing market before it conducts its own Opening Process

²⁸ See, e.g., NYSE National, Inc. Rule 7.34(a)(2) (defining Core Trading Session), and NYSE Chicago Rule 7.34(a)(2) (defining Core Trading Session).

²⁹ See supra note 27.

and begins to trade that security. As stated above, other exchanges begin to trade an equity security at 9:30 a.m. Eastern Time and those exchanges may enjoy some competitive advantage as a result of the proposed rule change. The Exchange understands that it may suffer the competitive disadvantage until the time it performs its Opening Process. However, the Exchange does not believe the amount of trading volume that may be directed away from the Exchange to these exchanges would cause an unfair burden on competition between it and its exchange competitors. This competitive dynamic exists today with regard to pre-market and post-market trading on exchanges. The Exchange does not currently compete for order flow pre or post market because it does not offer trading outside of Regular Trading Hours. Therefore, the proposed rule change does not introduce any new competitive issues between exchanges. Based on the above, the Exchange does not believe the proposed rule change would impose a burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Lastly, the Exchange's proposal to make a corresponding change to remove a reference to the Contingent Open in the definition of Regular Trading Session in Exchange Rule 1901 will have no competitive impact because it is simply a corresponding change to ensure the Exchange's rules are clear and continue to not include an ambiguities and references that could cause potential investor confusion.

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

Pursuant to Section 19(b)(3)(A) of the Act³⁰ and Rule 19b-4(f)(6)³¹ thereunder, the Exchange has designated this proposal as one that effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.³²

A proposed rule change filed under Rule 19b-4(f)(6)³³ normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b-4(f)(6)(iii)³⁴ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that matching orders at the midpoint of the NBBO after a security is open on the primary market, as occurs during the Exchange's Opening Process, may better reflect the true market for the security than a midpoint execution during the Contingent Open, which may occur prior to the security being open on the primary listing market. The Exchange also states that waiver of the operative delay would not have a material impact on trading because: (i) the Exchange currently does not offer an early trading session and, therefore, the Contingent Open does not serve as a transition from an early trading session to a regular trading session; and (ii) the Exchange does not currently attract a material amount of order flow at the beginning of the

³⁰ 15 U.S.C. 78s(b)(3)(A).

³¹ 17 CFR 240.19b-4(f)(6).

³² 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.

³³ 17 CFR 240.19b-4(f)(6).

³⁴ 17 CFR 240.19b-4(f)(6)(iii).

trading day, and thus any impact by the Exchange not performing a Contingent Open would be minimal. Therefore, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.³⁵

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 under Section 19(b)(2)(B) of the Act³⁶ 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 (<https://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-2023-71 on the subject line.

Paper Comments:

³⁵ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

³⁶ 15 U.S.C. 78s(b)(2)(B).

- 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-2023-71. This file number should be included on the subject line if email 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 (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright

protection. All submissions should refer to file number SR-PEARL-2023-71 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁷

Sherry R. Haywood,

Assistant Secretary.

³⁷ 17 CFR 200.30-3(a)(12), 59.