

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-101282; File No. SR-PEARL-2024-46)

October 8, 2024

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the MIAX Pearl Equities 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 September 30, 2024, 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 fee schedule (the “Fee Schedule”) applicable to MIAX Pearl Equities, an equities trading facility of the Exchange.

The text of the proposed rule change is available on the Exchange’s website at <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 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 Fee Schedule to decrease the fee for executions of orders that remove liquidity from the Exchange in securities priced below \$1.00 per share from 0.25% to 0.20% of the total dollar value of the transaction.³

Proposal to decrease the Fee for Removing Liquidity in Securities Priced Below \$1.00 Per Share

Currently, the Exchange assesses a fee of 0.25% of the total dollar value of any transaction in securities priced below \$1.00 per share that removes liquidity from the Exchange across all Tapes.⁴ The Exchange now proposes to decrease the fee from 0.25% to 0.20% of the total dollar value of any transaction in securities priced below \$1.00 per share that removes liquidity from the Exchange across all Tapes. The purpose of the proposed change is for business and competitive reasons.

Specifically, the Exchange proposes to amend Section 1) a) Standard Rates Table of the Fee Schedule to change the value in the table for Removing Liquidity in Securities below \$1.00 from 0.25% to 0.20%. Additionally, the Exchange proposes to amend the Section 1) b) Liquidity Indicator Codes and Associated Fees, to reflect the proposed change to the Standard Rates Table.

³ The Exchange notes that it recently reduced the fee for removing liquidity in securities priced at or above \$1.00. See Securities Exchange Act Release No. 101100 (September 19, 2024), 89 FR 78359 (September 25, 2024) (SR-PEARL-2024-41).

⁴ See Fee Schedule, Section 1) a). See also Fee Schedule, Section 1) b), Liquidity Indicator Codes RA, RB, RC, RR, RT, Ra, Rb, Rc, Rp, Rr and Rt.

The Exchange provides a table in section 1) b), Liquidity Indicator Codes and Associated Fees, that provides a list of fees and rebates so that Equity Members⁵ may better understand the fee or rebate that is applied to each execution. The liquidity indicator code for each execution is returned on the real-time trade report sent to the Equity Member that submitted the order.

The Exchange now proposes to amend the column titled “Fee/(Rebate) Securities Priced Below \$1.00” in Section 1) b) of the Fee Schedule to reflect the proposed decrease to the standard fee assessed for Removing Liquidity (Displayed Orders and Non-Displayed Orders) in securities priced below \$1.00 per share from 0.25% to 0.20% for the following liquidity indicator codes: “RA,” “RB,” “RC,” “RR,” “RT,” “Ra,” “Rb,” “Rc,” “Rp,” “Rr,” and “Rt.”

The Exchange believes it is appropriate to decrease the fee from 0.25% to 0.20% of the total dollar value of any transaction in securities priced below \$1.00 per share that removes liquidity from the Exchange across all Tapes to further encourage market participants to enter liquidity removing orders on the Exchange, thereby increasing the execution opportunities for the liquidity adding orders resting on the MIAX Pearl Equities Book.⁶

Implementation

The Exchange proposes to implement the changes to the Fee Schedule pursuant to this proposal on October 1, 2024.

2. Statutory Basis

⁵ The term “Equity Member” is a Member authorized by the Exchange to transact business on MIAX Pearl Equities. See Exchange Rule 1901.

⁶ The term “MIAX Pearl Equities Book” shall mean the electronic book of orders in equity securities maintained by the System. See Exchange Rule 1901.

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act⁷ in general, and furthers the objectives of Section 6(b)(4) of the Act⁸ in particular, in that it is an equitable allocation of reasonable fees and other charges among its Equity Members and issuers and other persons using its facilities. The Exchange also believes that the proposed rule change is consistent with the objectives of Section 6(b)(5)⁹ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, and to promote just and equitable principles of trade, to 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, and, particularly, is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange operates in a highly fragmented and competitive market in which market participants can readily direct their order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of many venues, including 16 registered equities exchanges as well as a number of alternative trading systems and other off-exchange venues, to which market participants may direct their order flow. Based on publicly available information, no single registered equities exchange currently has more than approximately 15-16% of the total market share of executed volume of equities trading.¹⁰ Thus, in such a low-concentrated and highly competitive market, no

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ Market share percentage calculated as of August 25, 2024. The Exchange receives and processes data made available through consolidated data feeds.

single equities exchange possesses significant pricing power in the execution of order flow, and the Exchange currently represents less than 2% of the overall market share.¹¹ The Commission and the courts have repeatedly expressed their 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.”¹²

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to new or different pricing structures being introduced into the market. Accordingly, competitive forces constrain the Exchange’s transaction fees and rebates, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. The Exchange believes the proposal reflects a reasonable and competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange, which the Exchange believes would enhance liquidity and market quality to the benefit of all Equity Members and market participants.

Proposal to decrease the Fee for Removing Liquidity in Securities Priced Below \$1.00 Per Share

The Exchange believes that the proposed change to decrease the standard fee for executions of all orders in securities priced below \$1.00 per share that remove liquidity from the

¹¹ Id.

¹² Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37499 (June 29, 2005).

Exchange is reasonable, equitable, and consistent with the Act as the proposed fee remains lower than, or similar to, the standard fee to remove liquidity in securities priced below \$1.00 per share charged by competing equities exchanges.¹³ The Exchange further believes that the proposal to decrease the standard fee for executions of all orders in securities priced below \$1.00 per share that remove liquidity from the Exchange is equitably allocated and not unfairly discriminatory because it will apply equally to all Equity Members that remove liquidity from the Exchange.

For the reasons discussed above, the Exchange submits that the proposal satisfies the requirements of Sections 6(b)(4) and 6(b)(5) of the Act in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Equity Members and other persons using its facilities and is not designed to unfairly discriminate between customers, issuers, brokers, or dealers. As described more fully below in the Exchange's statement regarding the burden on competition, the Exchange believes that its transaction pricing is subject to significant competitive forces, and that the proposed fees and rebates described herein are appropriate to address such forces.

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

The Exchange does not believe that the proposed changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed changes will continue to encourage Equity Members to maintain or increase their order flow to the Exchange, thereby contributing to a deeper and more liquid

¹³ See Cboe EDGX Equities Fee Schedule, Standard Rates, available at https://www.cboe.com/us/equities/membership/fee_schedule/edgx/ (charging a standard fee of 0.30% of the dollar value to remove liquidity in securities priced below \$1.00 per share); see also MEMX Fee Schedule, Transaction Fees (charging a standard fee of 0.28% of the total dollar value to remove liquidity in securities priced below \$1.00 per share); and NYSE American Equities Price List, Section I.A.2., available at https://www.nyse.com/publicdocs/nyse/markets/nyse-american/NYSE_America_Equities_Price_List.pdf (charging a standard fee of 0.25% of the total dollar value of the transaction to remove liquidity in securities priced below \$1.00 per share).

market to the benefit of all market participants and enhancing the attractiveness of the Exchange as a trading venue. As a result, the Exchange believes the proposal will enhance its competitiveness as a market that attracts actionable orders, thereby making it a more desirable destination venue for its customers. For these reasons, the Exchange believes that the proposal furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."¹⁴

Intra-market Competition

The Exchange believes that the proposed changes will continue to incentivize market participants to direct order flow to the Exchange, thereby contributing to a deeper and more liquid market to the benefit of all market participants and enhancing the attractiveness of the Exchange as a trading venue, which the Exchange believes, in turn, will continue to encourage market participants to direct additional order flow to the Exchange. Greater liquidity benefits all Equity Members by providing more trading opportunities and encourages Equity Members to send orders to the Exchange, thereby contributing to robust levels of liquidity, which benefits all Equity Members.

Similarly, the proposed decrease to the standard fee for executions of orders that remove volume from the Exchange will continue to apply equally to all Equity Members. As such, the Exchange believes the proposed changes would not impose any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act.

¹⁴ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 47396 (June 29, 2005).

Intermarket Competition

The Exchange believes its proposal will benefit competition as the Exchange operates in a highly competitive market. Equity Members have numerous alternative venues they may participate on and direct their order flow to, including fifteen other equities exchanges and numerous alternative trading systems and other off-exchange venues. As noted above, no single registered equities exchange currently has more than 15-16% of the total market share of executed volume of equities trading.¹⁵ Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. Moreover, the Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow in response to new or different pricing structures being introduced to the market. Accordingly, competitive forces constrain the Exchange's transaction fees and rebates generally, including with respect to executions of orders that remove volume from the Exchange, and market participants can readily choose to send their orders to other exchanges and off-exchange venues if they deem fee levels at those other venues to be more favorable.

As described above, the proposed changes are competitive proposals through which the Exchange is seeking to encourage additional order flow to the Exchange. Such proposed changes to (i) [*sic*] decrease the Removing Liquidity fee is comparable to, and competitive with, rates charged by other exchanges.¹⁶ The proposed change to update the Liquidity Indicator Codes and Associated Fees table is in conjunction with the Exchange's above mentioned proposed change to the standard fee for Removing Liquidity from the Exchange.

¹⁵ See supra note 10.

¹⁶ See supra note 13.

Additionally, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, 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.”¹⁷ The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. circuit stated: “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’”¹⁸ Accordingly, the Exchange does not believe its proposed pricing changes impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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.

¹⁷ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

¹⁸ *NetCoalition v. SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSE-2006-21)).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A)(ii) of the Act,¹⁹ and Rule 19b-4(f)(2) thereunder²⁰ the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

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 email to rule-comments@sec.gov. Please include file number SR-PEARL-2024-46 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-2024-46. 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>).

¹⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

²⁰ 17 CFR 240.19b-4.

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-2024-46 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.²¹

Sherry R. Haywood,

Assistant Secretary.

²¹ 17 CFR 200.30-3(a)(12).