

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-87308; File No. SR-PEARL-2019-31)

October 15, 2019

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the MIAX PEARL 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 October 1, 2019, 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 Fee Schedule (the “Fee Schedule”) to remove the application of, and definitions for, non-transaction fee waivers and waiver periods.

The Exchange previously filed this proposal on June 28, 2019 (SR-PEARL-2019-22).³ That filing was withdrawn on August 27, 2019. It is replaced with the current filing (SR-PEARL-2019-31).

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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 86363 (July 12, 2019), 84 FR 34445 (July 18, 2019) (SR-PEARL-2019-22) (the “Second Proposed Rule Change”).

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 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 remove the text and application of the three-month New Member Non-Transaction Fee Waiver⁴ and Waiver Period.⁵ MIA X PEARL commenced operations as a national securities exchange registered under Section 6 of the Act⁶ on February 6, 2017.⁷ The Exchange adopted its transaction fees and certain of its non-

⁴ “New Member Non-Transaction Fee Waiver” means the waiver of certain non-transaction fees, as explicitly set forth in specific sections of the Fee Schedule, for a new Member of the Exchange, for the waiver period. For purposes of this definition, the waiver period consists of the calendar month the new Member is credentialed to use the System in the production environment following approval as a new Member of the Exchange and the two (2) subsequent calendar months thereafter. For purposes of this definition, a new Member shall mean any Member who has not previously been approved as a Member of the Exchange. See the Definitions Section of the Fee Schedule.

⁵ “Waiver Period” means, for each applicable fee, the period of time from the initial effective date of the MIA X PEARL Fee Schedule until such time that the Exchange has an effective fee filing establishing the applicable fee. The Exchange will issue a Regulatory Circular announcing the establishment of an applicable fee that was subject to a Waiver Period at least fifteen (15) days prior to the termination of the Waiver Period and effective date of any such applicable fee. See the Definitions Section of the Fee Schedule.

⁶ 15 U.S.C. 78f.

transaction fees in its filing SR-PEARL-2017-10.⁸ In that filing, the Exchange expressly adopted the definition and application of the Waiver Period pertaining to fees for the Application for MIAX PEARL Membership, Monthly Trading Permit fees, Application Programming Interface (“API”) Testing and Certification fees for Members⁹ and non-Members, Port fees, MIAX PEARL Member Participant Identifier (“MPID”)¹⁰ fees, and MIAX PEARL Top of Market (“ToM”) and MIAX PEARL Liquidity Feed (“PLF”) market data fees.¹¹ The Exchange also stated that it would provide notice to market participants when the Exchange intended to terminate the Waiver Period for such fees.¹² The Exchange adopted the three-month New Member Non-Transaction Fee Waiver in the filing SR-PEARL-2018-07,¹³ which applied to the Monthly Trading Permit fee, Port fees, and ToM and PLF market data fees.

On March 14, 2019, the Exchange issued a Regulatory Circular that the Exchange would be removing the text and application of the New Member Non-Transaction Fee Waiver as it applied to all relevant non-transaction fees, including the Monthly Trading Permit fee, Port fees,

⁷ See Securities Exchange Act Release No. 79543 (December 13, 2016), 81 FR 92901 (December 20, 2016) (File No. 10-227) (order approving application of MIAX PEARL, LLC for registration as a national securities exchange).

⁸ See Securities Exchange Act Release No. 80061 (February 17, 2017), 82 FR 11676 (February 24, 2017) (SR-PEARL-2017-10).

⁹ “Member” means an individual or organization that is registered with the Exchange pursuant to Chapter II of the 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 Exchange Rule 100.

¹⁰ An MPID is a code used in the MIAX PEARL system to identify the participant to MIAX PEARL and to the participant’s Clearing Member respecting trades executed on MIAX PEARL. Participants may use more than one MPID.

¹¹ See supra note 8.

¹² See id.

¹³ See Securities Exchange Act Release No. 82867 (March 13, 2018), 83 FR 12044 (March 19, 2018) (SR-PEARL-2018-07).

ToM and PLF market data fees, and establishing other non-transaction fees, beginning April 1, 2019.¹⁴ The Exchange initially filed the proposal on March 27, 2019, designating the proposed fees effective April 1, 2019.¹⁵ The First Proposed Rule Change was published for comment in the Federal Register on April 12, 2019.¹⁶ The proposed fees remained in effect until the Exchange withdrew the First Proposed Rule Change on May 20, 2019.¹⁷

The Exchange refiled the proposal on June 28, 2019, designating the proposed fees effective July 1, 2019.¹⁸ The Second Proposed Rule Change was published for comment in the Federal Register on July 18, 2019.¹⁹ The proposed fee changes remained in effect until the Exchange withdrew the Second Proposed Rule Change on August 27, 2019.²⁰

On September 20, 2019, the Exchange filed separate proposals to establish API Testing and Certification fees²¹ and fees for the one-time Application for MIAX PEARL Membership.²² On October 1, 2019, the Exchange also filed to separately establish MPID fees.²³

¹⁴ See MIAX PEARL Regulatory Circular 2019-09 available at https://www.miaxoptions.com/sites/default/files/circular-files/MIAX_PEARL_RC_2019_09.pdf.

¹⁵ See Securities Exchange Act Release No. 85541 (April 8, 2019), 84 FR 14983 (April 12, 2019) (SR-PEARL-2019-12) (the “First Proposed Rule Change”).

¹⁶ See id.

¹⁷ See Letter from Gregory P. Ziegler, AVP and Senior Associate Counsel, MIAX PEARL, LLC, to Vanessa Countryman, Acting Secretary, Commission, dated May 17, 2019.

¹⁸ See supra note 3.

¹⁹ See id.

²⁰ See Letter from Joseph Ferraro, SVP and Deputy General Counsel, MIAX PEARL, LLC, to Vanessa Countryman, Acting Secretary, Commission, dated August 26, 2019.

²¹ See SR-PEARL-2019-26.

²² See SR-PEARL-2019-27.

²³ See SR-PEARL-2019-30.

The Exchange is now refiling the proposal to remove the text and application of the New Member Non-Transaction Fee Waiver and Waiver Period for all remaining non-transaction fees in the Fee Schedule. In particular, the Exchange proposes to remove the New Member Non-Transaction Fee Waiver as it currently applies to the Monthly Trading Permit fee; Port fees; and ToM and PLF market data fees. The Exchange also proposes to amend the Definitions section of the Fee Schedule to delete the definitions of “New Member Non-Transaction Fee Waiver” and “Waiver Period” as those definitions would no longer be applicable in accordance with this proposal, and the Exchange’s previous filings to establish API Testing and Certification fees,²⁴ fees for the one-time Application for MIA X PEARL Membership,²⁵ and MPID fees.²⁶

First, the Exchange proposes to remove the New Member Non-Transaction Fee Waiver from the Fee Schedule. Currently, the New Member Non-Transaction Fee Waiver waives the assessment of a fee for a Trading Permit, Port, ToM or PLF market data feed for a new Member of the Exchange for the first calendar month during which the new Member was approved as a Member and was credentialed to use the System²⁷ in the production environment, and for the two (2) subsequent calendar months thereafter.

The Exchange initially waived certain non-transaction fees for new Members in order to attract new business and encourage Members to use the Exchange. The Exchange now believes that the New Member Non-Transaction Fee Waiver is no longer necessary since the MIA X PEARL market is established and the Exchange no longer needs to rely on such waivers to attract market participants to a new venue.

²⁴ See supra note 21.

²⁵ See supra note 22.

²⁶ See supra note 23.

²⁷ The term “System” means the automated trading system used by the exchange for the trading of securities. See Exchange Rule 100.

The Exchange notes that any Member who began receiving the benefit of the New Member Non-Transaction Fee Waiver prior to the filing of this proposal, will continue to receive that benefit for the first calendar month during which they were approved as a Member and were credentialed to use the System in the production environment, and for the two (2) subsequent calendar months thereafter.

The Exchange also proposes to delete the definition for “Waiver Period” from the Fee Schedule as such term is no longer applicable since the Exchange recently filed to establish API Testing and Certification fees,²⁸ fees for the one-time Application for MIAX PEARL Membership,²⁹ and MPID fees.³⁰ Accordingly, the Exchange is no longer waiving non-transaction fees in light of MIAX PEARL’s market being more established and the Exchange no longer believes it necessary to waive these non-transaction fees to attract market participants to a new venue.

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.”³¹

There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more

²⁸ See supra note 21.

²⁹ See supra note 22.

³⁰ See supra note 23.

³¹ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

than approximately 16% market share.³² Therefore, no exchange possesses significant pricing power. More specifically, as of September 9, 2019, the Exchange had an approximately 5.30% market share of executed volume of multiply-listed equity and exchange traded fund (“ETF”) options.³³ 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 non-transaction and transaction fee changes. For example, on September 28, 2018, the Exchange filed with the Commission a proposal to decrease a transaction fee for certain types of orders (which fee was to be effective October 1, 2018).³⁴ The Exchange experienced an increase in total market share in the month of October 2018, after the proposal went into effect. Accordingly, the Exchange believes that the October 1, 2018 fee change, decreasing a transaction fee, may have contributed to the increase in the Exchange’s market share and, as such, the Exchange believes competitive forces constrain MIAX PEARL’s, and other options exchanges, ability to set non-transaction and transaction fees and market participants can shift order flow based on fee changes instituted by the exchanges.

The Exchange believes that market participants have the choice to become members of a particular exchange and because it is a choice, MIAX PEARL must set reasonable prices for its services and products, otherwise prospective members would not join and existing members would discontinue using the Exchange. No options market participant is required by rule,

³² The Options Clearing Corporation (“OCC”) publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available here: <https://www.theocc.com/market-data/volume/default.jsp>.

³³ See *id.*

³⁴ See Securities Exchange Act Release No. 84387 (October 9, 2018), 83 FR 52039 (October 15, 2018) (SR-PEARL-2018-21).

regulation, or competitive forces to be a Member of the Exchange. As evidence of the fact 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 a non-transaction fee change, a participant of the BOX Exchange LLC (“BOX”) disconnected from BOX following a recent proposal to increase BOX’s connectivity fees. In response to BOX’s proposed fee increase, R2G Services LLC (“R2G”) filed a comment letter which stated, “[w]hen BOX instituted a \$10,000/month price increase for connectivity; we had no choice but to terminate connectivity into them as well as terminate our market data relationship. The cost benefit analysis just didn’t make any sense for us at those new levels.”³⁵ Accordingly, this example shows that if an exchange sets too high of a non-transaction fee, market participants can choose to no longer conduct business on that particular exchange.

The proposal to remove the text and application of the New Member Non-Transaction Fee Waiver and Waiver Period would be applied uniformly to all market participants. The Exchange is not aware of any market participant that is currently planning to become a Member and thus would be subject to the proposed fees.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act³⁶ in general, and furthers the objectives of Section 6(b)(4) of the Act³⁷ in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities. The Exchange also believes the

³⁵ See Letter from Stefano Durdic, R2G, to Vanessa Countryman, Acting Secretary, Commission, dated March 27, 2019 (the “R2G Letter”).

³⁶ 15 U.S.C. 78f(b).

³⁷ 15 U.S.C. 78f(b)(4) and (5).

proposal furthers the objectives of Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, 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 is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes its proposal to remove the text and application of the New Member Non-Transaction Fee Waiver and Waiver Period as described above is reasonable in several respects. First, the Exchange is subject to significant competitive forces in the market for options transaction and non-transaction services that constrain its pricing determinations in that market. 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.”³⁸

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options transaction services. The Exchange is one of several options venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. There are currently 16 registered options exchanges competing for order flow. Based on publicly-available

³⁸ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

information, and excluding index-based options, no single exchange has more than approximately 16% of the market share of executed volume of multiply-listed equity and ETF options.³⁹ Therefore, no exchange possesses significant pricing power. More specifically, as of September 9, 2019, the Exchange had approximately a 5.30% market share of executed volume of multiply-listed equity and ETF options.⁴⁰

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 non-transaction and transaction fee changes. For example, on September 28, 2018, the Exchange filed with the Commission a proposal to decrease a transaction fee for certain types of orders (which fee was to be effective October 1, 2018).⁴¹ The Exchange experienced an increase in total market share in the month of October 2018, after the proposal went into effect. Accordingly, the Exchange believes that the October 1, 2018 fee change, decreasing a transaction fee, may have contributed to the increase in the Exchange's market share and, as such, the Exchange believes competitive forces constrain MIAX PEARL's, and other options exchanges, ability to set non-transaction and transaction fees and market participants can shift order flow based on fee changes instituted by the exchanges. Another example to show that market participants can discontinue or reduce use of certain categories of products and services, terminate an existing membership or determine to not

³⁹ The Options Clearing Corporation ("OCC") publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available here: <https://www.theocc.com/market-data/volume/default.jsp>.

⁴⁰ See *id.*

⁴¹ See Securities Exchange Act Release No. 84387 (October 9, 2018), 83 FR 52039 (October 15, 2018) (SR-PEARL-2018-21).

become a new member, and/or shift order flow, in response to a non-transaction fee change, is that a participant of the BOX disconnected from BOX following a recent proposal to increase BOX's connectivity fees. In response to BOX's proposed fee increase, R2G filed a comment letter which stated, "[w]hen BOX instituted a \$10,000/month price increase for connectivity; we had no choice but to terminate connectivity into them as well as terminate our market data relationship. The cost benefit analysis just didn't make any sense for us at those new levels."⁴² Accordingly, this example shows that if an exchange sets too high of a non-transaction fee, market participants can choose to no longer conduct business on that particular exchange. Further, the Exchange no longer believes it is necessary to waive these fees to attract market participants to the MIAX PEARL market since this market is now established and MIAX PEARL no longer needs to rely on such waivers to attract market participants to a new venue.

The Exchange believes that the proposed change is equitable and not unfairly discriminatory because the elimination of the New Member Non-Transaction Fee Waiver and Waiver Period will uniformly apply to all market participants of the Exchange. The Exchange initially waived certain non-transaction fees for market participants in order to attract new business and encourage prospective market participants to join the Exchange. The Exchange believes that the New Member Non-Transaction Fee Waiver is no longer necessary since the MIAX PEARL market is established and MIAX PEARL no longer relies on such waivers to attract market participants to a new venue. Further, the proposed rule change will not apply to any new Member who began receiving the New Member Non-Transaction Fee Waiver prior to the filing of this proposal and will continue to receive that benefit for the first calendar month

⁴² See supra note 35.

during which they were approved as a Member and were credentialed to use the System in the production environment, and for the two (2) subsequent calendar months thereafter.

Further, the Exchange believes its proposal to delete the definition for the Waiver Period in the Fee Schedule is reasonable, equitable, and not unfairly discriminatory because this definition is no longer applicable to any fees in the Fee Schedule in light of the Exchange's previous filings to establish API Testing and Certification fees,⁴³ fees for the one-time Application for MIAX PEARL Membership,⁴⁴ and MPID fees.⁴⁵ The Exchange no longer believes it is necessary to waive these fees to attract market participants to the MIAX PEARL market since this market is now established and MIAX PEARL no longer needs to rely on such waivers to attract market participants to a new venue. Accordingly, the definition for "Waiver Period" is no longer necessary to include in the Fee Schedule and this proposal will provide market participants with greater clarity regarding the Exchange's non-transaction and transaction fees.

Finally, 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 fees for services and products, in addition to order flow, to remain competitive with other exchanges.

The Exchange believes that the proposed changes reflect this competitive environment.

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

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

⁴³ See supra note 21.

⁴⁴ See supra note 22.

⁴⁵ See supra note 23.

Intra-Market Competition

The Exchange does not believe that the proposed rule change would place certain market participants at the Exchange at a relative disadvantage compared to other market participants or affect the ability of such market participants to compete. Unilateral action by MIAX PEARL in the assessment of certain non-transaction fees for services provided to its Members and others using its facilities will not have an impact on competition. As a more recent entrant in the already highly competitive environment for equity options trading, MIAX PEARL does not have the market power necessary to set prices for services that are unreasonable or unfairly discriminatory in violation of the Act.

Inter-Market Competition

The Exchange believes the proposed non-transaction fees do not place an undue burden on competition on other SROs that is not necessary or appropriate. The Exchange operates in a highly competitive market in which market participants can readily favor one of the 16 competing options venues if they deem fee levels at a particular venue to be excessive. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% market share.⁴⁶ Therefore, no exchange possesses significant pricing power in the execution of multiply-listed and ETF options order flow. As of September 9, 2019, the Exchange had an approximately 5.30% market share⁴⁷ and the Exchange believes that the ever-shifting market share among exchanges from month to month demonstrates that market participants can discontinue or reduce use of certain categories of products, or shift order flow, in response to fee changes. In such an environment, the Exchange must continually adjust its fees

⁴⁶ See supra note 39.

⁴⁷ Id.

and fee waivers to remain competitive with other exchanges and to attract 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,⁴⁸ and Rule 19b-4(f)(2)⁴⁹ 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.

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-2019-31 on the subject line.

Paper Comments:

⁴⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴⁹ 17 CFR 240.19b-4(f)(2).

- 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-2019-31. 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-2019-31 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.⁵⁰

Jill M. Peterson
Assistant Secretary

⁵⁰ 17 CFR 200.30-3(a)(12).