

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-91192)

February 23, 2021

Order Granting Application by MIAX PEARL, LLC for an Exemption Pursuant to Section 36(a) of the Exchange Act from the Rule Filing Requirements of Section 19(b) of the Exchange Act with Respect to Certain Rules Incorporated by Reference

MIAX PEARL, LLC (“MIAX PEARL” or “Exchange”) has filed with the Securities and Exchange Commission (“Commission”) an application for an exemption under Section 36(a)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)<sup>1</sup> from the rule filing requirements of Section 19(b) of the Exchange Act<sup>2</sup> with respect to certain rules of the Financial Industry Regulatory Authority, Inc. (“FINRA”) and Miami International Securities Exchange, LLC (“MIAX”), an affiliate of MIAX PEARL, that the Exchange seeks to incorporate by reference.<sup>3</sup> Section 36 of the Exchange Act authorizes the Commission to conditionally or unconditionally exempt any person, security, or transaction, or any class thereof, from any provision of the Exchange Act or rule thereunder, if necessary or appropriate in the public interest and consistent with the protection of investors.

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<sup>1</sup> 15 U.S.C. 78mm(a)(1).

<sup>2</sup> 15 U.S.C. 78s(b).

<sup>3</sup> See Letter from Christopher Solgan, VP, Senior Counsel, MIAX PEARL, to Vanessa Countryman, Secretary, Commission, dated January 15, 2021 (“Exemptive Request”). The Exchange submitted the Exemptive Request in connection with its proposal to adopt rules to govern the trading of equity securities on the Exchange (referred to herein as “MIAX PEARL Equities Rules”). See Securities Exchange Act Release Nos. 88132 (February 6, 2020), 85 FR 8053 (February, 12, 2020) (Notice of Filing of a Proposed Rule Change To Adopt Rules Governing the Trading of Equity Securities); and 88859 (May 12, 2020), 85 FR 29759 (May 18, 2020) (Notice of Filing of Amendment No. 1 and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, To Establish Rules Governing the Trading of Equity Securities).

On August 14, 2020, the Commission approved the Exchange’s proposal to adopt rules to govern the trading of cash equities and establish an equities trading facility of the Exchange.<sup>4</sup> Among other things, these MIAX PEARL Equities Rules include conduct and operational rules applicable to a new category of Exchange member participation, referred to as “Equity Members.”

MIAX PEARL has requested, pursuant to Rule 0-12 under the Exchange Act,<sup>5</sup> that the Commission grant the Exchange an exemption from the rule filing requirements of Section 19(b) of the Act for changes to those MIAX PEARL Equities Rules that are effected solely by virtue of a change to a cross-referenced FINRA or MIAX rule.<sup>6</sup> Specifically, the Exchange requests that it be permitted to incorporate by reference changes made to each FINRA or MIAX rule (or series of rules as the case may be) that is cross-referenced in the following MIAX PEARL Equities Rules, without the need for the Exchange to file separately the same proposed rule changes pursuant to Section 19(b) of the Act:<sup>7</sup>

- Rule 2101 (Violations Prohibited) cross-references MIAX Rule 300 (Adherence to Law),
- Rule 2104 (Communications with the Public) cross-references FINRA Rule 2210 (Communications with the Public) (except for paragraph (c) of FINRA Rule 2210),
- Rule 2105 (Know Your Customer) cross-references FINRA Rule 2090 (Know Your Customer),
- Rule 2107 (Suitability) cross-references FINRA Rule 2111 (Suitability),

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<sup>4</sup> See Securities Exchange Act Release No. 83289 (August 14, 2020), 85 FR 51510 (August 20, 2020) (SR-PEARL-2020-03).

<sup>5</sup> 17 CFR 240.0-12.

<sup>6</sup> See Exemptive Request, supra note 3, at 2.

<sup>7</sup> Id. at 2-3.

- Rule 2119 (Telemarketing) cross-references MIAX Rule 1325 (Telemarketing),
- Rule 2200 (General Requirements) cross-references FINRA Rule 4511 (General Requirements),
- Rule 2201 (Customer Account Information) cross-references FINRA Rule 4512 (Customer Account Information),
- Rule 2203 (Record of Written Complaints) cross-references FINRA Rule 4513 (Records of Written Customer Complaints),
- Rule 2204 (Disclosure of Financial Condition) cross-references MIAX Rule 1313 (Statement of Financial Condition to Customers),
- Rule 2302 (Annual Certification of Compliance and Supervisory Processes) cross-references FINRA Rule 3130 (Annual Certification of Compliance and Supervisory Processes),
- Rule 2303 (Prevention of the Misuse of Material, Non-Public Information) cross-references MIAX Rule 303 (Prevention of the Misuse of Material Non-Public Information),
- Rule 2304 (Anti-Money Laundering Compliance Program) cross-references MIAX Rule 315 (Anti-Money Laundering Compliance Program),
- Rule 2305 (Transactions for or by Associated Persons) cross-references FINRA Rule 3210 (Accounts at Other Broker-Dealers and Financial Institutions),
- Rule 2712 (Trading Ahead of Research Reports) cross-references MIAX Rule 320 (Trading Ahead of Research Reports),
- Rule 2714 (Front Running of Block Transactions) cross-references FINRA Rule 5270 (Front Running of Block Transactions), and

- Rule 2715 (Disruptive Quoting and Trading Activity Prohibited) cross-references MIAX Rule 322 (Disruptive Quoting and Trading Activity Prohibited).

The Exchange states that the direct incorporations by reference of FINRA and MIAX rules, which are regulatory in nature,<sup>8</sup> are intended to be a comprehensive integration of the relevant FINRA and MIAX rules into the MIAX PEARL Equities Rules.<sup>9</sup> As the Exchange notes, the MIAX PEARL Rules currently incorporate by reference Chapters III and XIII of the MIAX Rules, and the Exchange has previously received an exemption from the rule filing requirements of Section 19(b) with respect to these rules.<sup>10</sup> Equity Members are a subset of MIAX PEARL Members,<sup>11</sup> and MIAX PEARL Members are currently subject to the MIAX Rules that are already incorporated by reference.<sup>12</sup> According to the Exchange, the recently approved MIAX PEARL Equities Rules cross-reference to these MIAX Rules for completeness

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<sup>8</sup> See id. at 4. The Exchange represents that the FINRA and MIAX rules proposed to be incorporated by reference are not trading rules. In addition, the Exchange notes that several other self-regulatory organizations (“SROs”) incorporate by reference certain regulatory rules of another SRO and have received from the Commission similar exemptions from Section 19(b) of the Exchange Act. See id. at 4 n.7.

<sup>9</sup> See id. at 4.

<sup>10</sup> See id. at 3; Securities Exchange Act Release No. 79543 (December 13, 2016), 81 FR 92901 (December 20, 2016) (File No. 10-227) (In the Matter of the Application of MIAX PEARL, LLC for Registration as a National Securities Exchange; Findings, Opinion, and Order of the Commission) (granting the application of MIAX PEARL for registration as a national securities exchange, and conditionally exempting MIAX PEARL from the rule filing requirements of Section 19(b) of the Act with respect to the MIAX, Chicago Board Options Exchange, Incorporated (“CBOE”), New York Stock Exchange LLC, and FINRA rules that MIAX PEARL proposed to incorporate by reference, including MIAX Rules Chapters III and XIII).

<sup>11</sup> See MIAX PEARL Rule 2000.

<sup>12</sup> See MIAX PEARL Rules Chapters III and XIII.

and to remove doubt as to whether an Equity Member would be subject to these cross-referenced MIAX Rules.<sup>13</sup>

The Exchange represents that, as a condition to the requested exemption from Section 19(b) of the Act, the Exchange will provide written notice to its members whenever FINRA or MIAX proposes a change to a cross-referenced rule.<sup>14</sup> Such notice will alert Exchange members to the proposed rule change and give them an opportunity to comment on the proposal.<sup>15</sup> The Exchange further represents that it similarly will inform members in writing when the Commission approves any such proposed rule changes.<sup>16</sup>

According to the Exchange, this exemption is necessary and appropriate because it would result in the MIAX PEARL Equities Rules being consistent with the relevant cross-referenced FINRA and MIAX rules at all times, thus ensuring identical regulation of joint members of the Exchange, FINRA, and/or MIAX with respect to such rules.<sup>17</sup> Without such an exemption, joint members of the Exchange, FINRA, and/or MIAX could be subject to two different standards.<sup>18</sup> In addition, the Exchange believes that the exemption would ensure consistency between certain MIAX PEARL Equities Rules and FINRA rules that are covered by the Exchange's regulatory

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<sup>13</sup> See Exemptive Request, supra note 3, at 4.

<sup>14</sup> The Exchange represents that it will provide such notice on its website in the same section it uses to post its own proposed rule change filings pursuant to Rule 19b-4(l) within the same time period required by such Rule. The MIAX PEARL website will also include a link to the FINRA or MIAX website where the proposed rule change filings are located. See id.

<sup>15</sup> See id. at 4 n.8.

<sup>16</sup> See id.

<sup>17</sup> See id. at 3.

<sup>18</sup> See id.

services agreement (“RSA”) with FINRA, which would facilitate FINRA’s provision of services to the Exchange under the RSA within the scope of those MIA X PEARL Equities Rules.<sup>19</sup>

The Commission has issued exemptions similar to the Exchange’s request.<sup>20</sup> In granting one such exemption in 2010, the Commission repeated a prior, 2004 Commission statement that it would consider similar future exemption requests from other SROs, provided that:

- An SRO wishing to incorporate rules of another SRO by reference has submitted a written request for an order exempting it from the requirement in Section 19(b) of the Exchange Act to file proposed rule changes relating to the rules incorporated by reference, has identified the applicable originating SRO(s), together with the rules it wants to incorporate by reference, and otherwise has complied with the procedural

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<sup>19</sup> See id.

<sup>20</sup> See, e.g., Securities Exchange Act Release Nos. 83296 (May 21, 2018), 83 FR 24362 (May 25, 2018) (order granting NYSE National, Inc.’s exemptive request relating to rules of FINRA incorporated by reference); 83040 (April 12, 2018), 83 FR 17198 (April 18, 2018) (order granting MIA X PEARL’s exemptive request relating to rules of MIA X incorporated by reference); 78101 (June 17, 2016), 81 FR 41141, 41165 (June 23, 2016) (order granting application for registration as a national securities exchange of Investors’ Exchange, LLC and exemptive request relating to rules of FINRA incorporated by reference); 76998 (January 29, 2016), 81 FR 6066, 6083-84 (February 4, 2016) (order granting application for registration as a national securities exchange of ISE Mercury, LLC (now known as Nasdaq MRX, LLC) and exemptive request relating to rules of the International Securities Exchange, LLC (now known as Nasdaq ISE, LLC) (“ISE”) incorporated by reference, including index options rules); 70050 (July 26, 2013), 78 FR 46622, 46642 (August 1, 2013) (order granting application for registration as a national securities exchange of Topaz Exchange, LLC (now known as Nasdaq GEMX, LLC) and exemptive request relating to rules of ISE incorporated by reference, including index options rules); 61152 (December 10, 2009), 74 FR 66699, 66709-10 (December 16, 2009) (order granting application for registration as a national securities exchange of C2 Options Exchange, Incorporated and exemptive request relating to rules of CBOE incorporated by reference, including index options rules). See also, e.g., Securities Exchange Act Release No. 61534 (February 18, 2010), 75 FR 8760 (February 25, 2010) (order granting BATS Exchange, Inc.’s exemptive request relating to rules incorporated by reference by the BATS Exchange Options Market rules) (“BATS Options Market Order”).

requirements set forth in the Commission's release governing procedures for requesting exemptive orders pursuant to Rule 0-12 under the Exchange Act;<sup>21</sup>

- The incorporating SRO has requested incorporation of categories of rules (rather than individual rules within a category) that are not trading rules (e.g., the SRO has requested incorporation of rules such as margin, suitability, or arbitration); and
- The incorporating SRO has reasonable procedures in place to provide written notice to its members each time a change is proposed to the incorporated rules of another SRO.<sup>22</sup>

The Commission believes that the Exchange has satisfied each of these conditions. The Commission also believes that granting the Exchange an exemption from the rule filing requirements under Section 19(b) of the Exchange Act will promote efficient use of Commission and Exchange resources by avoiding duplicative rule filings based on simultaneous changes to identical rule text sought by more than one SRO.<sup>23</sup> The Commission therefore finds it appropriate in the public interest and consistent with the protection of investors to exempt the Exchange from the rule filing requirements under Section 19(b) of the Exchange Act with respect to the above-described rules it has incorporated by reference. This exemption is conditioned upon the Exchange promptly providing written notice to its members whenever FINRA or MIAX changes a rule that the Exchange has incorporated by reference.

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<sup>21</sup> See 17 CFR 240.0-12; Securities Exchange Act Release No. 39624 (February 5, 1998), 63 FR 8101 (February 18, 1998) (Commission Procedures for Filing Applications for Orders for Exemptive Relief Pursuant to Section 36 of the Exchange Act).

<sup>22</sup> See BATS Options Market Order, supra note 20 (citing Securities Exchange Act Release No. 49260 (February 17, 2004), 69 FR 8500 (February 24, 2004) (order granting exemptive request relating to rules incorporated by reference by several SROs) ("2004 Order")).

<sup>23</sup> See id. at 8761. See also 2004 Order, supra note 22, at 8502.

Accordingly, IT IS ORDERED, pursuant to Section 36 of the Exchange Act,<sup>24</sup> that the Exchange is exempt from the rule filing requirements of Section 19(b) of the Exchange Act solely with respect to changes to the MIAX PEARL Equities Rules identified in its request that incorporate by reference certain FINRA and MIAX rules that are the result of changes to such FINRA or MIAX rules, provided that the Exchange promptly provides written notice to its members whenever FINRA or MIAX proposes to change a rule that the Exchange has incorporated by reference.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>25</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>24</sup> 15 U.S.C. 78mm.

<sup>25</sup> 17 CFR 200.30-3(a)(76).