

Required fields are shown with yellow backgrounds and asterisks.

Filing by MIAX PEARL, LLC  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
			Rule		
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input checked="" type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>
Section 3C(b)(2) * <input type="checkbox"/>	

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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**Description**

Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

Proposal to Implement an Equity Rights Program.

**Contact Information**

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name \* Christopher      Last Name \* Solgan

Title \* Vice President and Senior Counsel

E-mail \* csolgan@miami-holdings.com

Telephone \* (609) 897-8494      Fax

**Signature**

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title \*)

Date 08/20/2020      Vice President and Senior Counsel

By Christopher Solgan     

(Name \*)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

**Form 19b-4 Information \***

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

**1. Text of the Proposed Rule Change**

(a) MIAX PEARL, LLC (“MIAX PEARL” or “Exchange”), pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> proposes to implement an equity rights program related to fees charged for the trading of both options and equity securities on the Exchange.

Notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1.

(b) Not applicable.

(c) Not applicable.

**2. Procedures of the Self-Regulatory Organization**

The proposed rule change was approved by the MIAX PEARL Board of Directors on June 11, 2020. No other action by the Exchange is necessary for the filing of the proposed rule change.

Questions and comments on the proposed rule change may be directed to Chris Solgan, Vice President and Senior Counsel, at (609) 897-8494.

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

On April 6, 2018, the Exchange filed for immediate effectiveness a proposed rule change with the Commission to implement an equity rights program (“Existing Program”) pursuant to which units representing the right to acquire equity in the Exchange’s parent holding company,

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

Miami International Holdings, Inc. (“MIH”) were issued to a participating Member<sup>3</sup> in exchange for payment of an initial purchase price or the prepayment of certain ERP Exchange Fees<sup>4</sup> and the achievement of certain liquidity volume thresholds on the Exchange over a 32-month period.<sup>5</sup> On August 14, 2020, the Commission approved a proposed rule change to adopt rules governing the trading of equity securities on the Exchange (the platform for the trading of equity securities is referred to herein as “MIAX PEARL Equities”).<sup>6</sup> The Exchange now proposes to implement a second equity rights program under which ERP Exchange fees would be expanded to include fees incurred on and after October 1, 2020<sup>7</sup> through June 30, 2024 (“Prepaid Fee Period”) for trading equity securities on MIAX PEARL Equities and the achievement of certain

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<sup>3</sup> The term “Member” means an individual or organization that is registered with the Exchange pursuant to Chapter II of the Exchange’s 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.

<sup>4</sup> The ERP Exchange fees under the Existing Program consist of: (a) transaction fees as set forth in Section 1)a of the MIAX PEARL Options Fee Schedule; (b) membership fees as set forth in Section 3 of the MIAX PEARL Options Fee Schedule; (c) system connectivity fees as set forth in Section 5 of the MIAX PEARL Options Fee Schedule; and (d) market data fees as set forth in Section 6 of the MIAX PEARL Options Fee Schedule (collectively, the “ERP Exchange Fees”).

<sup>5</sup> See Securities Exchange Act Release No. 83012 (April 9, 2018), 83 FR 16163 (April 13, 2018) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Implement an Equity Rights Program) (“Initial ERP Filing”).

<sup>6</sup> See Securities Exchange Act Release Nos. 88132 (February 6, 2020), 85 FR 8053 (February 12, 2020) (SR-PEARL-2020-03) (Notice of Filing of a Proposed Rule Change to Adopt Rules Governing the Trading of Equity Securities); and 89563 (August 14, 2020), 85 FR 51510 (August 20, 2020) (Order Approving Proposed Rule Change to Adopt Rules Governing the Trading of Equity Securities).

<sup>7</sup> The Exchange intends to begin trading equity securities on September 25, 2020. See MIAX PEARL Receives Approval to Operate Equities Exchange; Launch Date Confirmed for September 25, 2020, available at [https://www.miaxoptions.com/sites/default/files/press\\_release-files/MIAX\\_Press\\_Release\\_08182020.pdf](https://www.miaxoptions.com/sites/default/files/press_release-files/MIAX_Press_Release_08182020.pdf) (dated August 19, 2020).

liquidity volume thresholds on MIAX PEARL Equities over a 42-month period (“Proposed Program”). ERP Exchange Fees under the Proposed Program would also include the fees included today as part of the Existing Program.<sup>8</sup> The Proposed Program would be independent of the Existing Program.

Similar to the Existing Program for options, the purpose of the Proposed Program is to promote the long-term interests of MIAX PEARL by providing incentives designed to encourage future MIH owners and MIAX PEARL options and equity market participants to contribute to the growth and success of MIAX PEARL, by being active liquidity providers and takers on MIAX PEARL Equities in particular, and to provide enhanced levels of trading volume in equity securities through an opportunity to increase their proprietary interests in MIAX PEARL’s enterprise value.

Members that participated in the Existing Program had two options to choose from: (i) an offering of I-Units; and/or (ii) an offering of J-Units.<sup>9</sup> Members that choose to participate in the Proposed Program will be able to participate in an offering of L-Units.<sup>10</sup> Under the Proposed Program, market participants would be able to pre-pay the following ERP Exchange Fees for

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<sup>8</sup> See supra note 5.

<sup>9</sup> See supra note 5 for a complete description of I-Units and J-Units.

<sup>10</sup> Like the Existing Program, the Proposed Program also provides equity-like consideration in exchange for market making or the provision of liquidity, order flow or volume and is open to market participants generally. Also like the Existing Program, all MIAX PEARL Members may participate in the Proposed Program subject to their satisfaction of eligibility requirements. To be designated as a participant Member, an applicant must: (i) be a Member in good standing of MIAX PEARL; (ii) qualify as an “accredited investor” as such term is defined in Regulation D of the Securities Act of 1933; and (iii) have executed all required documentation for Program participation. If L-Unit option is oversubscribed, the units will be allocated on a pro-rata basis that may result in a fractional allocation.

trading equities: (a) transaction fees; (b) system connectivity fees; and (c) market data fees.<sup>11</sup>

Like under the Existing Program, market participants would also be able to pre-pay the following ERP Exchange Fees for trading options: (a) transaction fees as set forth in Section 1)a of the MIAX PEARL Options Fee Schedule; (b) membership fees as set forth in Section 3 of the MIAX PEARL Options Fee Schedule; (c) system connectivity fees as set forth in Section 5 of the MIAX PEARL Options Fee Schedule; and (d) market data fees as set forth in Section 6 of the MIAX PEARL Options Fee Schedule.

Members that participate in the Proposed Program will be issued for each unit warrants to purchase 432,163 shares of common stock of MIH in exchange for such participant Member's cash contribution of \$1,000,000, and with such warrants being exercisable upon the achievement by the participating Member of certain volume thresholds on the Exchange during a 42-month measurement period, commencing January 1, 2021. A total of 22 L-Units will be offered. The total equity ownership of MIH common stock held by any one participant Member will be subject to a cap of 19.9%.<sup>12</sup>

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<sup>11</sup> The Exchange notes that proprietary real-time market data will be provided free of charge for a period of time. The Exchange also notes that it will file a proposed rule change to adopt MIAX PEARL Equities Fee Schedule with the Commission pursuant to Section 19(b)(3)(A)(iii) of the Exchange Act and Rule 19b-4(f)(2) thereunder prior to the commencement of trading equity securities currently anticipated for September 25, 2020. The Exchange has provided (and will continue to provide) a draft of the MIAX PEARL Equities Fee Schedule to any current or potential participant that expresses interest joining the Proposed Program (with the condition that a final MIAX PEARL Equities Fee Schedule is subject to filing with the Commission), so that such participant can evaluate the proposed fees and make a fully-informed decision in whether it wishes to join the Proposed Program.

<sup>12</sup> See Ninth Article (b)(i)(B), Amended and Restated Certificate of Incorporation of Miami International Holdings, Inc., effective October 16, 2015 (providing that no Exchange Member, either alone or together with its Related Persons, may own, directly or indirectly, of record or beneficially, shares constituting more than twenty percent (20%) of any class of capital stock of the Corporation). See also Ninth Article (b)(i)(C),

The warrants will vest in seven (7) tranches during a measurement period of months 1-42 of the Proposed Program. In addition, the participant Members may earn or lose the right to exercise warrants on a pro-rata basis based upon meeting volume commitments during the measurement periods, as detailed below.

A participant Member will be eligible to earn warrants during measurement periods provided that the participant has achieved a specified percentage of the average daily volume for National Market System equity securities on MIAX PEARL Equities as reported by the applicable consolidated transaction reporting plan (“ADV”).<sup>13</sup> While market participants will be able to pre-pay fees related to both their equity and options trading on MIAX PEARL, the

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Amended and Restated Certificate of Incorporation of Miami International Holdings, Inc., effective October 16, 2015 (providing that no Person, either alone or together with its Related Persons, at any time may, directly, indirectly or pursuant to any voting trust, agreement, plan or other arrangement, vote or cause the voting of shares of the capital stock of the Corporation or give any consent or proxy with respect to shares representing more than twenty percent (20%) of the voting power of the then issued and outstanding capital stock of the Corporation, nor may any Person, either alone or together with its Related Persons, enter into any agreement, plan or other arrangement with any other Person, either alone or together with its Related Persons, under circumstances that would result in the shares of capital stock of the Corporation that are subject to such agreement, plan or other arrangement not being voted on any matter or matters or any proxy relating thereto being withheld, where the effect of such agreement, plan or other arrangement would be to enable any Person, either alone or together with its Related Persons, to vote, possess the right to vote or cause the voting of shares of the capital stock of the Corporation which would represent more than twenty percent (20%) of said voting power.). Any purported transfer of shares or ownership of shares in violation of the ownership cap by a stockholder would be subject to the limitations of the Certificate of Incorporation, including the non-recognition of voting rights of shares in excess of the cap and a redemption right by MIH for excess shares. See also Ninth Article (d) and (e), Amended and Restated Certificate of Incorporation of Miami International Holdings, Inc., effective October 16, 2015.

<sup>13</sup> If an equity security is not traded on MIAX PEARL Equities, then the trading volume in that equity security will be omitted from the calculation of ADV.

Proposed Program's performance criteria will only include a market participant's equity market share and will not include a market participant's options market share.

The seven (7) tranches will vest during the following measurement periods: (i) 7.14% of the warrants resulting from months 1-6, with a volume commitment of 0.014% of MIAX PEARL Equities ADV per L-Unit;<sup>14</sup> (ii) 5.41% of the warrants resulting from months 7-12, with a volume commitment of 0.053% of MIAX PEARL Equities ADV per L-Unit; (iii) 9.49% of the warrants resulting from months 13-18, with a volume commitment of 0.093% of MIAX PEARL Equities ADV per L-Unit; (iv) 13.47% of the warrants resulting from months 19-24, with a volume commitment of 0.132% of MIAX PEARL Equities ADV per L-Unit; (v) 17.45% of the warrants resulting from months 25-30, with a volume commitment of 0.171% of MIAX PEARL Equities ADV per L-Unit; (vi) 21.53% of the warrants resulting from months 31-36, with a volume commitment of 0.211% of MIAX PEARL Equities ADV per L-Unit; and (vii) 25.51% of the warrants resulting from months 37-42, with a volume commitment of 0.250% of MIAX PEARL Equities ADV per L-Unit. If a participant Member reaches 100% of the volume commitment during a tranche's measurement period, the Member will earn 100% of the warrants applicable to such measurement period. If a participant Member reaches less than 100% but at least 70% of the volume commitment during a tranche's measurement period, the Member will earn a reduced amount of warrants on a pro-rata basis applicable to such measurement period. If a participant Member fails to reach a minimum of 70% of the volume commitment during a tranche's measurement period, the Member will lose all right to that tranche of warrants. Notwithstanding, in the event a participant Member has not satisfied the volume commitment for any one measurement period (other than measurement period 7), the participant Member will

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<sup>14</sup> The first measurement period will begin on January 1, 2021 and end June 30, 2021.



have an opportunity to vest those warrants if such participant Member applies a portion of the Member's over-performance from the measurement period immediately following the prior measurement period to ensure a minimum of 70% of the volume commitment in the prior period and in addition has satisfied the volume commitment for the measurement period immediately following. If a participant Member exceeds 100% of the volume commitment during a tranche's measurement period, the Member is able to earn, on a pro-rata basis, warrants not earned by other participant Members. Any trades that would otherwise constitute Qualifying Trades shall be excluded upon the Company's receipt of written instructions from the Participant identifying which trades should not be counted in the number of trades executed on the Exchange by the Participant. Special strategies that are subject to a fee cap will be omitted from the calculation of MIAX PEARL Equities Volume.

Similar to the Existing Program, a Member of the Exchange and its Affiliate as defined in the options and equities Fee Schedules of MIAX PEARL<sup>15</sup> may together participate in the Proposed Program.

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<sup>15</sup> For purposes of the MIAX PEARL Options Fee Schedule and the anticipated MIAX PEARL Equities Fee Schedule, the term "Affiliate" means an affiliate of a Member of at least 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A, ("Affiliate"). The MIAX PEARL Options Fee Schedule further defines the term "Affiliate" as the Appointed Market Maker of an Appointed EEM (or, conversely, the Appointed EEM of an Appointed Market Maker). An "Appointed Market Maker" is a MIAX PEARL Options Market Maker (who does not otherwise have a corporate affiliation based upon common ownership with an EEM) that has been appointed by an EEM and an "Appointed EEM" is an EEM (who does not otherwise have a corporate affiliation based upon common ownership with a MIAX PEARL Market Maker) that has been appointed by a MIAX PEARL Options Market Maker, pursuant to the following process. A MIAX PEARL Options Market Maker appoints an EEM and an EEM appoints a MIAX PEARL Market Maker, for the purposes of the Fee Schedule, by each completing and sending an executed Volume Aggregation Request Form by email to membership@miaxoptions.com no later than 2 business days prior to the first business day of the month in which the designation is to become effective. Transmittal of a validly completed and executed form to the Exchange along with the Exchange's

Each participant Member will have a standard piggyback registration right to include the common shares issuable upon exercise of the warrants should MIH file a Registration Statement under the Securities Act of 1933. Each participant Member will also have the right to participate pro rata in all future offerings of MIH securities for so long as the participant Member holds at least 51% of the common shares issued or issuable upon the exercise of warrants included in at least one L-Unit. MIH will have the right of first refusal to purchase any shares issued or issuable upon the exercise of the warrants that a participant Member decides to transfer or sell. Other participant Members will have the secondary right of first refusal to purchase any common shares or warrant shares that a participant Member decides to transfer or sell.

When a participating Member acquires a certain number of units, the Member can appoint one director to the MIAX PEARL Board.<sup>16</sup> The Exchange notes that the number of non-industry directors on the MIAX PEARL Board, including at least one independent director, must equal or exceed the number of industry directors and Member representatives, and that additional

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acknowledgement of the effective designation to each of the Market Maker and EEM will be viewed as acceptance of the appointment. The Exchange will only recognize one designation per Member. A Member may make a designation not more than once every 12 months (from the date of its most recent designation), which designation shall remain in effect unless or until the Exchange receives written notice submitted 2 business days prior to the first business day of the month from either Member indicating that the appointment has been terminated. Designations will become operative on the first business day of the effective month and may not be terminated prior to the end of the month. Execution data and reports will be provided to both parties. See the Definitions section of the MIAX PEARL Options Fee Schedule. The Exchange anticipates to also provide in the MIAX PEARL Equities Fee Schedule for an Equity Member to aggregate ADAV and ADV with other Equity Members that control, are controlled by, or are under common control with such Equity Member (as evidenced on such Equity Member's Form BD).

<sup>16</sup> The Commission notes that MIAX PEARL will need to submit a separate proposed rule change to make changes to its corporate governance documents to accommodate aspects of the proposal that involve or affect the board of MIAX PEARL.

new non-industry directors and Member representative directors will need to be added in order to maintain this status. The Exchange also notes that any directors that may be selected by a participating Member would not be counted towards the 20% Member representative requirement on the MIAX PEARL Board. In addition, the Exchange notes that a Member is only entitled to a new seat if they are not currently represented on the MIAX PEARL Board.

All applicants will be subject to the same eligibility and designation criteria, and all participant Members will participate in the Proposed Program on the same terms, conditions and restrictions. To be designated as a participant Member, an applicant must: (i) be a Member in good standing of MIAX PEARL; (ii) qualify as an “accredited investor” as such term is defined in Regulation D of the Securities Act of 1933;<sup>17</sup> and (iii) have executed all required documentation for Proposed Program participation. Participant Members must have executed the definitive documentation, satisfied the eligibility criteria required of Proposed Program participants enumerated above, and tendered the minimum cash investment or prepayment of fees by September 10, 2020, with a closing to occur on September 11, 2020.

As discussed above, the purpose of the Proposed Program is to encourage Members to direct greater trade volume to MIAX PEARL to enhance trading volume in MIAX PEARL’s market. Increased volume will provide for greater liquidity and enhanced price discovery, which benefits all market participants. Other exchanges have engaged in the practice of incentivizing

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<sup>17</sup> The purpose of this criterion relates to the ability of MIH to sell shares of common stock pursuant to an exemption from registration under the Securities Act of 1933. The definition of “accredited investor” under Rule 501(a)(1) of the Securities Act of 1933 includes any broker or dealer registered pursuant to Section 15 of the Act. MIAX PEARL Rule 200(b) requires a Member to be registered as a broker or dealer pursuant to Section 15 of the Act, therefore all MIAX PEARL Members will satisfy this criterion.

increased order flow in order to attract liquidity providers through equity sharing arrangements.<sup>18</sup> As mentioned above, the Exchange previously adopted an equity rights program and now simply seeks to expand that Existing Program to include MIAX PEARL Equities.<sup>19</sup> In addition, Miami International Securities Exchange, LLC (“MIAX”), an affiliate of the Exchange, previously adopted substantially similar programs to incentivize increased order flow in order to attract liquidity providers through an equity sharing arrangement.<sup>20</sup> The Proposed Program similarly intends to attract order flow to MIAX PEARL Equities, which will increase liquidity, thereby providing greater trading opportunities and tighter spreads for other market participants and causing a corresponding increase in order flow from these other market participants. The Proposed Program will similarly reward the liquidity providers that provide this additional volume with a potential proprietary interest in MIH.

The specific volume thresholds of the Proposed Program’s measurement periods were set based upon business determinations and intended to incentivize firms to send orders to MIAX PEARL Equities. An increased number of orders sent to MIAX PEARL Equities will in turn provide tighter and more liquid markets, and therefore attract more business as well.

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<sup>18</sup> See, e.g., Securities Exchange Act Release Nos. 62358 (June 22, 2010), 75 FR 37861 (June 30, 2010) (SR-NSX-2010-06); 64742 (June 24, 2011), 76 FR 38436 (June 30, 2011) (SR-NYSEAmex-2011-018); 69200 (March 21, 2013), 78 FR 18657 (March 27, 2013) (SR-CBOE-2013-31); 74114 (January 22, 2015), 80 FR 4611 (January 28, 2015) (SR-BOX-2015-03); and 74576 (March 25, 2015), 80 FR 17122 (March 31, 2015) (SR-BOX-2015-16).

<sup>19</sup> See supra note 5.

<sup>20</sup> See Securities Exchange Act Release Nos. 70498 (September 25, 2013), 78 FR 60348 (October 1, 2013) (SR-MIAX-2013-43); 74095 (January 20, 2015), 80 FR 4011 (January 26, 2015) (SR-MIAX-2015-02); 74225 (February 6, 2015), 80 FR 7897 (February 12, 2015) (SR-MIAX-2015-05); and 80909 (June 12, 2017), 82 FR 27743 (June 16, 2017) (SR-MIAX-2017-28).

The Exchange's proposal to include certain non-transaction fees within the definition of ERP Exchange Fees and thus render them eligible for prepayment under the Proposed Program is similar to the Existing Program and similarly designed to offer broader Member participation in the Proposed Program. Since the Exchange operates with a maker-taker pricing structure, Members that are only "makers" on the Exchange could receive significant transaction rebates on a monthly basis, which could obviate the need to pre-pay transaction fees under the Proposed Program. However, by including certain regular, monthly recurring non-transaction fees as eligible for prepayment under the Proposed Program, the Exchange believes that it is creating an incentive for Members that conduct this type of business on the Exchange, and MIAX PEARL Equities in particular, to participate in the Proposed Program, thereby broadening the number of Members that could potentially participate in the Proposed Program.

MIAX PEARL will initiate the measurement period on January 1, 2021. The Exchange will notify Members of the implementation of the Proposed Program and the dates of the enrollment period by Regulatory Circular, and will post a copy of this rule filing on its website. Any MIAX PEARL Member that is interested in participating in the Proposed Program may contact MIAX PEARL for more information and legal documentation and will be required to enter into a nondisclosure agreement regarding this additional Proposed Program information.

b. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act<sup>21</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>22</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and

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<sup>21</sup> 15 U.S.C. 78f(b).

<sup>22</sup> 15 U.S.C. 78f(b)(5).

equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) of the Act<sup>23</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>24</sup> which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. As mentioned above, the Exchange previously adopted an equity rights program which was published by the Commission. The Exchange now simply seeks to expand upon that Existing Program to include MIAX PEARL Equities.<sup>25</sup>

In particular, the proposed rule change is equitable and not unfairly discriminatory, because all Members may elect to participate (or elect to not participate) in the Proposed Program and earn units on the same terms and conditions, assuming they satisfy the same eligibility criteria as described above. The eligibility criteria are objective; thus, all Members have the ability to satisfy them. The Board of MIAX PEARL also has authorized MIAX PEARL to offer warrants in MIH to any Member that requests designation to participate in the Proposed Program and otherwise satisfies the eligibility criteria to ensure that all Members will have the opportunity to own warrants and thus participate in the Proposed Program if they so choose. The

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<sup>23</sup> 15 U.S.C. 78f(b)(5).

<sup>24</sup> 15 U.S.C. 78f(b)(4).

<sup>25</sup> See supra note 5.

participant Members will earn warrants on a pro-rata basis upon meeting fixed volume threshold amounts during the measurement periods that will apply to all participant Members.

The Exchange believes that the methodology used to calculate the volume thresholds is fair, reasonable and not unfairly discriminatory because it is based on objective criteria that are designed to omit from the calculation functionality that is not available on the Exchange and types of transactions that are subject to little or no transaction fees. The Proposed Program is designed to reward participating Members for bringing their orders and quotes to MIAX PEARL Equities.

The Exchange believes that its proposal to allow Affiliates to participate in the Proposed Program is fair, reasonable and not unfairly discriminatory because, like the Existing Program, it is being offered to all Members of the Exchange on the same terms and conditions. The Exchange believes that allowing traditional Corporate Affiliates to participate in the Proposed Program is reasonable and appropriate because it will provide those participants with a potentially greater opportunity to achieve the volume thresholds in the Proposed Program.

The Exchange believes the Proposed Program is equitable and reasonable because an increase in volume and liquidity would benefit all market participants by providing more trading opportunities and tighter spreads, even to those market participants that do not participate in the Proposed Program. Additionally, the Exchange believes the proposed rule change is consistent with the Act because, as described above, the Proposed Program is designed to bring greater volume and liquidity to the Exchange, including MIAX PEARL Equities, which will benefit all market participants by providing tighter quoting and better prices, all of which perfects the mechanism for a free and open market and national market system.

#### **4. 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 not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change will improve competition by providing market participants with another option when determining where to execute orders and post liquidity.

The Exchange believes that the proposed change would increase both intermarket and intramarket competition by incenting participant Members to direct their orders to MIAX PEARL Equities, which will enhance the quality of quoting and increase the volume traded here. To the extent that there is an additional competitive burden on non-participant Members, the Exchange believes that this is appropriate because the Proposed Program should incent Members to direct additional order flow to MIAX PEARL Equities, and thus provide additional liquidity that enhances the quality of its markets and increases the volume traded on MIAX PEARL Equities. To the extent that this purpose is achieved, all of the Exchange's market participants should benefit from the improved market liquidity. Enhanced market quality and increased transaction volume that results from the anticipated increase in order flow directed to the Exchange will benefit all market participants and improve competition on the Exchange and MIAX PEARL Equities in particular.

Given the robust competition for volume among equities markets, many of which offer the same products, implementing a program to attract order flow like the one being proposed in this filing is consistent with the above-mentioned goals of the Act. This is especially true for the smaller equities markets, such as MIAX PEARL Equities in particular, which is competing for volume with much larger exchanges that dominate the equities trading industry. MIAX PEARL has no history in the trading of equities, so it is unlikely that the Proposed Program could cause any competitive harm to the equities markets or to market participants. Rather, the Proposed



Program is an attempt by a new equities market to attract order volume away from larger competitors by adopting an innovative pricing strategy, as evidenced by the volume thresholds of the Proposed Program that represent fractions of equities Total Consolidated Volume. The Exchange notes that if the Proposed Program resulted in a modest average daily trading volume in equities executed on MIAX PEARL, it would represent a minimal reduction in volume of its larger competitors in the industry. The Exchange believes that the Proposed Program will help further competition, because market participants will have yet another option in determining where to execute orders and post liquidity if they factor the benefits of MIAX PEARL equity participation into the determination. The Exchange notes that other exchanges have engaged in the practice of incentivizing increased order flow in order to attract liquidity providers through equity sharing arrangements.<sup>26</sup> In addition, as mentioned above, the Exchange previously adopted an equity rights program and now simply seeks to adopt the Proposed Program to include MIAX PEARL Equities.<sup>27</sup>

5. **Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others**

No written comments were either solicited or received.

6. **Extension of Time Period for Commission Action**

Not applicable.

7. **Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)**

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<sup>26</sup> See supra note 18.

<sup>27</sup> See supra note 5.

Pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>28</sup> and Rule 19b-4(f)(2) thereunder<sup>29</sup> 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.

At any time within 60 days of the filing of this 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.

**8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission**

The proposed rule change is based on similar programs adopted by MIAX and the existing program previously adopted by the Exchange.<sup>30</sup> The proposed rule change differs from the program adopted by MIAX by including fees related to trading options and equities. The MIAX program only included fees for trading option.

**9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act**

Not applicable.

**10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act**

Not applicable.

**11. Exhibits**

1. Notice of proposed rule for publication in the Federal Register.

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<sup>28</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>29</sup> 17 CFR 240.19b-4.

<sup>30</sup> See supra note 5. See also Securities Exchange Act Release No. 80909 (June 12, 2017), 82 FR 27743 (June 16, 2017) (SR-MIAX-2017-28).

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. SR-PEARL-2020-10)

\_\_\_\_\_, 2020

Self-Regulatory Organizations: Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by MIAX PEARL, LLC to Implement a Second Equity Rights Program

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on \_\_\_\_\_ 2020, 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 implement an equity rights program related to fees charged for the trading of both options and equity securities on the Exchange.

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 the proposed rule change. The text of these statements may be examined at the places specified

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 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

On April 6, 2018, the Exchange filed for immediate effectiveness a proposed rule change with the Commission to implement an equity rights program (“Existing Program”) pursuant to which units representing the right to acquire equity in the Exchange’s parent holding company, Miami International Holdings, Inc. (“MIH”) were issued to a participating Member<sup>3</sup> in exchange for payment of an initial purchase price or the prepayment of certain ERP Exchange Fees<sup>4</sup> and the achievement of certain liquidity volume thresholds on the Exchange over a 32-month period.<sup>5</sup> On August 14, 2020, the Commission approved a proposed rule change to adopt rules governing the trading of equity securities on the Exchange (the platform for the trading of equity securities is referred to herein as “MIAX PEARL Equities”).<sup>6</sup> The Exchange now proposes to

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<sup>3</sup> The term “Member” means an individual or organization that is registered with the Exchange pursuant to Chapter II of the Exchange’s 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.

<sup>4</sup> The ERP Exchange fees under the Existing Program consist of: (a) transaction fees as set forth in Section 1)a of the MIAX PEARL Options Fee Schedule; (b) membership fees as set forth in Section 3 of the MIAX PEARL Options Fee Schedule; (c) system connectivity fees as set forth in Section 5 of the MIAX PEARL Options Fee Schedule; and (d) market data fees as set forth in Section 6 of the MIAX PEARL Options Fee Schedule (collectively, the “ERP Exchange Fees”).

<sup>5</sup> See Securities Exchange Act Release No. 83012 (April 9, 2018), 83 FR 16163 (April 13, 2018) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Implement an Equity Rights Program) (“Initial ERP Filing”).

<sup>6</sup> See Securities Exchange Act Release Nos. 88132 (February 6, 2020), 85 FR 8053 (February 12, 2020) (SR-PEARL-2020-03) (Notice of Filing of a Proposed Rule Change to Adopt Rules Governing the Trading of Equity Securities); and 89563 (August 14, 2020), 85 FR 51510 (August 20, 2020) (Order Approving Proposed Rule Change to Adopt Rules Governing the Trading of Equity Securities).

implement a second equity rights program under which ERP Exchange fees would be expanded to include fees incurred on and after October 1, 2020<sup>7</sup> through June 30, 2024 (“Prepaid Fee Period”) for trading equity securities on MIAX PEARL Equities and the achievement of certain liquidity volume thresholds on MIAX PEARL Equities over a 42-month period (“Proposed Program”). ERP Exchange Fees under the Proposed Program would also include the fees included today as part of the Existing Program.<sup>8</sup> The Proposed Program would be independent of the Existing Program.

Similar to the Existing Program for options, the purpose of the Proposed Program is to promote the long-term interests of MIAX PEARL by providing incentives designed to encourage future MIH owners and MIAX PEARL options and equity market participants to contribute to the growth and success of MIAX PEARL, by being active liquidity providers and takers on MIAX PEARL Equities in particular, and to provide enhanced levels of trading volume in equity securities through an opportunity to increase their proprietary interests in MIAX PEARL’s enterprise value.

Members that participated in the Existing Program had two options to choose from: (i) an offering of I-Units; and/or (ii) an offering of J-Units.<sup>9</sup> Members that choose to participate in the Proposed Program will be able to participate in an offering of L-Units.<sup>10</sup> Under the Proposed

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<sup>7</sup> The Exchange intends to begin trading equity securities on September 25, 2020. See MIAX PEARL Receives Approval to Operate Equities Exchange; Launch Date Confirmed for September 25, 2020, available at [https://www.miaxoptions.com/sites/default/files/press\\_release-files/MIAX\\_Press\\_Release\\_08182020.pdf](https://www.miaxoptions.com/sites/default/files/press_release-files/MIAX_Press_Release_08182020.pdf) (dated August 19, 2020).

<sup>8</sup> See supra note 5.

<sup>9</sup> See supra note 5 for a complete description of I-Units and J-Units.

<sup>10</sup> Like the Existing Program, the Proposed Program also provides equity-like consideration in exchange for market making or the provision of liquidity, order flow or volume and is open to market participants generally. Also like the Existing Program, all MIAX PEARL Members may participate in the Proposed Program subject to their satisfaction of

Program, market participants would be able to pre-pay the following ERP Exchange Fees for trading equities: (a) transaction fees; (b) system connectivity fees; and (c) market data fees.<sup>11</sup>

Like under the Existing Program, market participants would also be able to pre-pay the following ERP Exchange Fees for trading options: (a) transaction fees as set forth in Section 1)a of the MIAX PEARL Options Fee Schedule; (b) membership fees as set forth in Section 3 of the MIAX PEARL Options Fee Schedule; (c) system connectivity fees as set forth in Section 5 of the MIAX PEARL Options Fee Schedule; and (d) market data fees as set forth in Section 6 of the MIAX PEARL Options Fee Schedule.

Members that participate in the Proposed Program will be issued for each unit warrants to purchase 432,163 shares of common stock of MIH in exchange for such participant Member's cash contribution of \$1,000,000, and with such warrants being exercisable upon the achievement by the participating Member of certain volume thresholds on the Exchange during a 42-month measurement period, commencing January 1, 2021. A total of 22 L-Units will be offered. The

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eligibility requirements. To be designated as a participant Member, an applicant must: (i) be a Member in good standing of MIAX PEARL; (ii) qualify as an "accredited investor" as such term is defined in Regulation D of the Securities Act of 1933; and (iii) have executed all required documentation for Program participation. If L-Unit option is oversubscribed, the units will be allocated on a pro-rata basis that may result in a fractional allocation.

<sup>11</sup> The Exchange notes that proprietary real-time market data will be provided free of charge for a period of time. The Exchange also notes that it will file a proposed rule change to adopt MIAX PEARL Equities Fee Schedule with the Commission pursuant to Section 19(b)(3)(A)(iii) of the Exchange Act and Rule 19b-4(f)(2) thereunder prior to the commencement of trading equity securities currently anticipated for September 25, 2020. The Exchange has provided (and will continue to provide) a draft of the MIAX PEARL Equities Fee Schedule to any current or potential participant that expresses interest joining the Proposed Program (with the condition that a final MIAX PEARL Equities Fee Schedule is subject to filing with the Commission), so that such participant can evaluate the proposed fees and make a fully-informed decision in whether it wishes to join the Proposed Program.

total equity ownership of MIH common stock held by any one participant Member will be subject to a cap of 19.9%.<sup>12</sup>

The warrants will vest in seven (7) tranches during a measurement period of months 1-42 of the Proposed Program. In addition, the participant Members may earn or lose the right to exercise warrants on a pro-rata basis based upon meeting volume commitments during the measurement periods, as detailed below.

A participant Member will be eligible to earn warrants during measurement periods provided that the participant has achieved a specified percentage of the average daily volume for National Market System equity securities on MIAX PEARL Equities as reported by the

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<sup>12</sup> See Ninth Article (b)(i)(B), Amended and Restated Certificate of Incorporation of Miami International Holdings, Inc., effective October 16, 2015 (providing that no Exchange Member, either alone or together with its Related Persons, may own, directly or indirectly, of record or beneficially, shares constituting more than twenty percent (20%) of any class of capital stock of the Corporation). See also Ninth Article (b)(i)(C), Amended and Restated Certificate of Incorporation of Miami International Holdings, Inc., effective October 16, 2015 (providing that no Person, either alone or together with its Related Persons, at any time may, directly, indirectly or pursuant to any voting trust, agreement, plan or other arrangement, vote or cause the voting of shares of the capital stock of the Corporation or give any consent or proxy with respect to shares representing more than twenty percent (20%) of the voting power of the then issued and outstanding capital stock of the Corporation, nor may any Person, either alone or together with its Related Persons, enter into any agreement, plan or other arrangement with any other Person, either alone or together with its Related Persons, under circumstances that would result in the shares of capital stock of the Corporation that are subject to such agreement, plan or other arrangement not being voted on any matter or matters or any proxy relating thereto being withheld, where the effect of such agreement, plan or other arrangement would be to enable any Person, either alone or together with its Related Persons, to vote, possess the right to vote or cause the voting of shares of the capital stock of the Corporation which would represent more than twenty percent (20%) of said voting power.). Any purported transfer of shares or ownership of shares in violation of the ownership cap by a stockholder would be subject to the limitations of the Certificate of Incorporation, including the non-recognition of voting rights of shares in excess of the cap and a redemption right by MIH for excess shares. See also Ninth Article (d) and (e), Amended and Restated Certificate of Incorporation of Miami International Holdings, Inc., effective October 16, 2015.

applicable consolidated transaction reporting plan (“ADV”).<sup>13</sup> While market participants will be able to pre-pay fees related to both their equity and options trading on MIAX PEARL, the Proposed Program’s performance criteria will only include a market participant’s equity market share and will not include a market participant’s options market share.

The seven (7) tranches will vest during the following measurement periods: (i) 7.14% of the warrants resulting from months 1-6, with a volume commitment of 0.014% of MIAX PEARL Equities ADV per L-Unit;<sup>14</sup> (ii) 5.41% of the warrants resulting from months 7-12, with a volume commitment of 0.053% of MIAX PEARL Equities ADV per L-Unit; (iii) 9.49% of the warrants resulting from months 13-18, with a volume commitment of 0.093% of MIAX PEARL Equities ADV per L-Unit; (iv) 13.47% of the warrants resulting from months 19-24, with a volume commitment of 0.132% of MIAX PEARL Equities ADV per L-Unit; (v) 17.45% of the warrants resulting from months 25-30, with a volume commitment of 0.171% of MIAX PEARL Equities ADV per L-Unit; (vi) 21.53% of the warrants resulting from months 31-36, with a volume commitment of 0.211% of MIAX PEARL Equities ADV per L-Unit; and (vii) 25.51% of the warrants resulting from months 37-42, with a volume commitment of 0.250% of MIAX PEARL Equities ADV per L-Unit. If a participant Member reaches 100% of the volume commitment during a tranche’s measurement period, the Member will earn 100% of the warrants applicable to such measurement period. If a participant Member reaches less than 100% but at least 70% of the volume commitment during a tranche’s measurement period, the Member will earn a reduced amount of warrants on a pro-rata basis applicable to such measurement period. If a participant Member fails to reach a minimum of 70% of the volume commitment during a

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<sup>13</sup> If an equity security is not traded on MIAX PEARL Equities, then the trading volume in that equity security will be omitted from the calculation of ADV.

<sup>14</sup> The first measurement period will begin on January 1, 2021 and end June 30, 2021.



tranche's measurement period, the Member will lose all right to that tranche of warrants.

Notwithstanding, in the event a participant Member has not satisfied the volume commitment for any one measurement period (other than measurement period 7), the participant Member will have an opportunity to vest those warrants if such participant Member applies a portion of the Member's over-performance from the measurement period immediately following the prior measurement period to ensure a minimum of 70% of the volume commitment in the prior period and in addition has satisfied the volume commitment for the measurement period immediately following. If a participant Member exceeds 100% of the volume commitment during a tranche's measurement period, the Member is able to earn, on a pro-rata basis, warrants not earned by other participant Members. Any trades that would otherwise constitute Qualifying Trades shall be excluded upon the Company's receipt of written instructions from the Participant identifying which trades should not be counted in the number of trades executed on the Exchange by the Participant. Special strategies that are subject to a fee cap will be omitted from the calculation of MIAX PEARL Equities Volume.

Similar to the Existing Program, a Member of the Exchange and its Affiliate as defined in the options and equities Fee Schedules of MIAX PEARL<sup>15</sup> may together participate in the Proposed Program.

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<sup>15</sup> For purposes of the MIAX PEARL Options Fee Schedule and the anticipated MIAX PEARL Equities Fee Schedule, the term "Affiliate" means an affiliate of a Member of at least 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A, ("Affiliate"). The MIAX PEARL Options Fee Schedule further defines the term "Affiliate" as the Appointed Market Maker of an Appointed EEM (or, conversely, the Appointed EEM of an Appointed Market Maker). An "Appointed Market Maker" is a MIAX PEARL Options Market Maker (who does not otherwise have a corporate affiliation based upon common ownership with an EEM) that has been appointed by an EEM and an "Appointed EEM" is an EEM (who does not otherwise have a corporate affiliation based upon common ownership with a MIAX PEARL Market Maker) that has been appointed by a MIAX PEARL Options Market Maker, pursuant to the following process. A MIAX PEARL Options Market Maker appoints an EEM and an EEM appoints a MIAX PEARL Market Maker, for the purposes of the Fee Schedule, by each

Each participant Member will have a standard piggyback registration right to include the common shares issuable upon exercise of the warrants should MIH file a Registration Statement under the Securities Act of 1933. Each participant Member will also have the right to participate pro rata in all future offerings of MIH securities for so long as the participant Member holds at least 51% of the common shares issued or issuable upon the exercise of warrants included in at least one L-Unit. MIH will have the right of first refusal to purchase any shares issued or issuable upon the exercise of the warrants that a participant Member decides to transfer or sell. Other participant Members will have the secondary right of first refusal to purchase any common shares or warrant shares that a participant Member decides to transfer or sell.

When a participating Member acquires a certain number of units, the Member can appoint one director to the MIAX PEARL Board.<sup>16</sup> The Exchange notes that the number of non-industry directors on the MIAX PEARL Board, including at least one independent director, must

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completing and sending an executed Volume Aggregation Request Form by email to [membership@miaxoptions.com](mailto:membership@miaxoptions.com) no later than 2 business days prior to the first business day of the month in which the designation is to become effective. Transmittal of a validly completed and executed form to the Exchange along with the Exchange's acknowledgement of the effective designation to each of the Market Maker and EEM will be viewed as acceptance of the appointment. The Exchange will only recognize one designation per Member. A Member may make a designation not more than once every 12 months (from the date of its most recent designation), which designation shall remain in effect unless or until the Exchange receives written notice submitted 2 business days prior to the first business day of the month from either Member indicating that the appointment has been terminated. Designations will become operative on the first business day of the effective month and may not be terminated prior to the end of the month. Execution data and reports will be provided to both parties. See the Definitions section of the MIAX PEARL Options Fee Schedule. The Exchange anticipates to also provide in the MIAX PEARL Equities Fee Schedule for an Equity Member to aggregate ADAV and ADV with other Equity Members that control, are controlled by, or are under common control with such Equity Member (as evidenced on such Equity Member's Form BD).

<sup>16</sup> The Commission notes that MIAX PEARL will need to submit a separate proposed rule change to make changes to its corporate governance documents to accommodate aspects of the proposal that involve or affect the board of MIAX PEARL.

equal or exceed the number of industry directors and Member representatives, and that additional new non-industry directors and Member representative directors will need to be added in order to maintain this status. The Exchange also notes that any directors that may be selected by a participating Member would not be counted towards the 20% Member representative requirement on the MIAX PEARL Board. In addition, the Exchange notes that a Member is only entitled to a new seat if they are not currently represented on the MIAX PEARL Board.

All applicants will be subject to the same eligibility and designation criteria, and all participant Members will participate in the Proposed Program on the same terms, conditions and restrictions. To be designated as a participant Member, an applicant must: (i) be a Member in good standing of MIAX PEARL; (ii) qualify as an “accredited investor” as such term is defined in Regulation D of the Securities Act of 1933;<sup>17</sup> and (iii) have executed all required documentation for Proposed Program participation. Participant Members must have executed the definitive documentation, satisfied the eligibility criteria required of Proposed Program participants enumerated above, and tendered the minimum cash investment or prepayment of fees by September 10, 2020, with a closing to occur on September 11, 2020.

As discussed above, the purpose of the Proposed Program is to encourage Members to direct greater trade volume to MIAX PEARL to enhance trading volume in MIAX PEARL’s market. Increased volume will provide for greater liquidity and enhanced price discovery, which benefits all market participants. Other exchanges have engaged in the practice of incentivizing

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<sup>17</sup> The purpose of this criterion relates to the ability of MIH to sell shares of common stock pursuant to an exemption from registration under the Securities Act of 1933. The definition of “accredited investor” under Rule 501(a)(1) of the Securities Act of 1933 includes any broker or dealer registered pursuant to Section 15 of the Act. MIAX PEARL Rule 200(b) requires a Member to be registered as a broker or dealer pursuant to Section 15 of the Act, therefore all MIAX PEARL Members will satisfy this criterion.

increased order flow in order to attract liquidity providers through equity sharing arrangements.<sup>18</sup> As mentioned above, the Exchange previously adopted an equity rights program and now simply seeks to expand that Existing Program to include MIAX PEARL Equities.<sup>19</sup> In addition, Miami International Securities Exchange, LLC (“MIAX”), an affiliate of the Exchange, previously adopted substantially similar programs to incentivize increased order flow in order to attract liquidity providers through an equity sharing arrangement.<sup>20</sup> The Proposed Program similarly intends to attract order flow to MIAX PEARL Equities, which will increase liquidity, thereby providing greater trading opportunities and tighter spreads for other market participants and causing a corresponding increase in order flow from these other market participants. The Proposed Program will similarly reward the liquidity providers that provide this additional volume with a potential proprietary interest in MIH.

The specific volume thresholds of the Proposed Program’s measurement periods were set based upon business determinations and intended to incentivize firms to send orders to MIAX PEARL Equities. An increased number of orders sent to MIAX PEARL Equities will in turn provide tighter and more liquid markets, and therefore attract more business as well.

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<sup>18</sup> See, e.g., Securities Exchange Act Release Nos. 62358 (June 22, 2010), 75 FR 37861 (June 30, 2010) (SR-NSX-2010-06); 64742 (June 24, 2011), 76 FR 38436 (June 30, 2011) (SR-NYSEAmex-2011-018); 69200 (March 21, 2013), 78 FR 18657 (March 27, 2013) (SR-CBOE-2013-31); 74114 (January 22, 2015), 80 FR 4611 (January 28, 2015) (SR-BOX-2015-03); and 74576 (March 25, 2015), 80 FR 17122 (March 31, 2015) (SR-BOX-2015-16).

<sup>19</sup> See supra note 5.

<sup>20</sup> See Securities Exchange Act Release Nos. 70498 (September 25, 2013), 78 FR 60348 (October 1, 2013) (SR-MIAX-2013-43); 74095 (January 20, 2015), 80 FR 4011 (January 26, 2015) (SR-MIAX-2015-02); 74225 (February 6, 2015), 80 FR 7897 (February 12, 2015) (SR-MIAX-2015-05); and 80909 (June 12, 2017), 82 FR 27743 (June 16, 2017) (SR-MIAX-2017-28).

The Exchange's proposal to include certain non-transaction fees within the definition of ERP Exchange Fees and thus render them eligible for prepayment under the Proposed Program is similar to the Existing Program and similarly designed to offer broader Member participation in the Proposed Program. Since the Exchange operates with a maker-taker pricing structure, Members that are only "makers" on the Exchange could receive significant transaction rebates on a monthly basis, which could obviate the need to pre-pay transaction fees under the Proposed Program. However, by including certain regular, monthly recurring non-transaction fees as eligible for prepayment under the Proposed Program, the Exchange believes that it is creating an incentive for Members that conduct this type of business on the Exchange, and MIAX PEARL Equities in particular, to participate in the Proposed Program, thereby broadening the number of Members that could potentially participate in the Proposed Program.

MIAX PEARL will initiate the measurement period on January 1, 2021. The Exchange will notify Members of the implementation of the Proposed Program and the dates of the enrollment period by Regulatory Circular, and will post a copy of this rule filing on its website. Any MIAX PEARL Member that is interested in participating in the Proposed Program may contact MIAX PEARL for more information and legal documentation and will be required to enter into a nondisclosure agreement regarding this additional Proposed Program information.

## 2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act<sup>21</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>22</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in

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<sup>21</sup> 15 U.S.C. 78f(b).

<sup>22</sup> 15 U.S.C. 78f(b)(5).

facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) of the Act<sup>23</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>24</sup> which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. As mentioned above, the Exchange previously adopted an equity rights program which was published by the Commission. The Exchange now simply seeks to expand upon that Existing Program to include MIAX PEARL Equities.<sup>25</sup>

In particular, the proposed rule change is equitable and not unfairly discriminatory, because all Members may elect to participate (or elect to not participate) in the Proposed Program and earn units on the same terms and conditions, assuming they satisfy the same eligibility criteria as described above. The eligibility criteria are objective; thus, all Members have the ability to satisfy them. The Board of MIAX PEARL also has authorized MIAX PEARL to offer warrants in MIH to any Member that requests designation to participate in the Proposed Program and otherwise satisfies the eligibility criteria to ensure that all Members will have the opportunity to own warrants and thus participate in the Proposed Program if they so choose. The participant Members will earn warrants on a pro-rata basis upon meeting fixed volume threshold amounts during the measurement periods that will apply to all participant Members.

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<sup>23</sup> 15 U.S.C. 78f(b)(5).

<sup>24</sup> 15 U.S.C. 78f(b)(4).

<sup>25</sup> See supra note 5.

The Exchange believes that the methodology used to calculate the volume thresholds is fair, reasonable and not unfairly discriminatory because it is based on objective criteria that are designed to omit from the calculation functionality that is not available on the Exchange and types of transactions that are subject to little or no transaction fees. The Proposed Program is designed to reward participating Members for bringing their orders and quotes to MIAX PEARL Equities.

The Exchange believes that its proposal to allow Affiliates to participate in the Proposed Program is fair, reasonable and not unfairly discriminatory because, like the Existing Program, it is being offered to all Members of the Exchange on the same terms and conditions. The Exchange believes that allowing traditional Corporate Affiliates to participate in the Proposed Program is reasonable and appropriate because it will provide those participants with a potentially greater opportunity to achieve the volume thresholds in the Proposed Program.

The Exchange believes the Proposed Program is equitable and reasonable because an increase in volume and liquidity would benefit all market participants by providing more trading opportunities and tighter spreads, even to those market participants that do not participate in the Proposed Program. Additionally, the Exchange believes the proposed rule change is consistent with the Act because, as described above, the Proposed Program is designed to bring greater volume and liquidity to the Exchange, including MIAX PEARL Equities, which will benefit all market participants by providing tighter quoting and better prices, all of which perfects the mechanism for a free and open market and national market system.

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 not necessary or appropriate in furtherance of the purposes of the Act. The

Exchange believes that the proposed rule change will improve competition by providing market participants with another option when determining where to execute orders and post liquidity.

The Exchange believes that the proposed change would increase both intermarket and intramarket competition by incenting participant Members to direct their orders to MIAX PEARL Equities, which will enhance the quality of quoting and increase the volume traded here. To the extent that there is an additional competitive burden on non-participant Members, the Exchange believes that this is appropriate because the Proposed Program should incent Members to direct additional order flow to MIAX PEARL Equities, and thus provide additional liquidity that enhances the quality of its markets and increases the volume traded on MIAX PEARL Equities. To the extent that this purpose is achieved, all of the Exchange's market participants should benefit from the improved market liquidity. Enhanced market quality and increased transaction volume that results from the anticipated increase in order flow directed to the Exchange will benefit all market participants and improve competition on the Exchange and MIAX PEARL Equities in particular.

Given the robust competition for volume among equities markets, many of which offer the same products, implementing a program to attract order flow like the one being proposed in this filing is consistent with the above-mentioned goals of the Act. This is especially true for the smaller equities markets, such as MIAX PEARL Equities in particular, which is competing for volume with much larger exchanges that dominate the equities trading industry. MIAX PEARL has no history in the trading of equities, so it is unlikely that the Proposed Program could cause any competitive harm to the equities markets or to market participants. Rather, the Proposed Program is an attempt by a new equities market to attract order volume away from larger competitors by adopting an innovative pricing strategy, as evidenced by the volume thresholds of the Proposed Program that represent fractions of equities Total Consolidated Volume. The



Exchange notes that if the Proposed Program resulted in a modest average daily trading volume in equities executed on MIAX PEARL, it would represent a minimal reduction in volume of its larger competitors in the industry. The Exchange believes that the Proposed Program will help further competition, because market participants will have yet another option in determining where to execute orders and post liquidity if they factor the benefits of MIAX PEARL equity participation into the determination. The Exchange notes that other exchanges have engaged in the practice of incentivizing increased order flow in order to attract liquidity providers through equity sharing arrangements.<sup>26</sup> In addition, as mentioned above, the Exchange previously adopted an equity rights program and now simply seeks to adopt the Proposed Program to include MIAX PEARL Equities.<sup>27</sup>

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,<sup>28</sup> and Rule 19b-4(f)(2)<sup>29</sup> 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.

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<sup>26</sup> See supra note 18.

<sup>27</sup> See supra note 5.

<sup>28</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>29</sup> 17 CFR 240.19b-4(f)(2).

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-PEARL-2020-10 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Vanessa Countryman, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-PEARL-2020-10. 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 Web site (<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; the

Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-PEARL-2020-10 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.<sup>30</sup>

Vanessa Countryman  
Secretary

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<sup>30</sup> 17 CFR 200.30-3(a)(12).