

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-89736; File No. SR-PEARL-2020-14)

September 2, 2020

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Designation of Members for Mandatory Disaster Recovery Testing Pursuant to Regulation SCI for Calendar Year 2020

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 26, 2020, MIAX PEARL, LLC (“MIAX PEARL” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend how the Exchange will designate certain Members³ to participate in mandatory disaster recovery testing pursuant to Regulation SCI and Miami International Securities Exchange, LLC (“MIAX”) Rule 321, which is incorporated by reference in the Exchange’s Rules, for calendar year 2020.

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 on the Purpose of, and Statutory Basis for, the Proposed Rule Change

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See MIAX and Exchange Rule 100.

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange proposes to amend how the Exchange will designate certain Members to participate in mandatory disaster recovery testing pursuant to Regulation SCI and MIAX Rule 321, which is incorporated by reference in Chapter III of the Exchange's Rules, for calendar year 2020. This proposed rule change is based on a recent proposed rule change by the Long Term Stock Exchange, Inc. ("LTSE").⁴

Regulation SCI requires MIAX PEARL, as an SCI entity, to maintain business continuity and disaster recovery plans that provide for resilient and geographically diverse backup and recovery capabilities that are reasonably designed to achieve two-hour resumption of critical SCI systems and next business day resumption of other SCI systems following a wide-scale disruption.⁵

Regulation SCI and MIAX Rule 321 also require MIAX PEARL to designate certain members to participate in business continuity and disaster recovery testing in a manner specified

⁴ See Securities Exchange Act Release No. 89216 (July 2, 2020), 85 FR 41259 (July 9, 2020) (SR-LTSE-2020-10).

⁵ See Securities Exchange Act Release No. 73639 (November 19, 2014), 79 FR 72252 (December 5, 2014).

by MIAX PEARL and at a frequency of not less than once every 12 months.⁶ Such testing ordinarily is part of an annual industry-wide test, which is next scheduled for October 24, 2020.

MIAX Rule 321 governs mandatory participation in testing of MIAX PEARL's backup systems, and states that the Exchange will designate Members that account for a specified percentage of executed volume on the Exchange, measured on quarterly basis, as required to connect to the Exchange's backup systems and participate in functional and performance testing of such system.⁷

On August 14, 2020, the Commission approved the Exchange's proposal to adopt rules governing the trading of equity securities, referred to as MIAX PEARL Equities.⁸ MIAX PEARL Equities currently is not operational and is not expecting to have two quarters of trading data on which to base its Member designation prior to the October 24, 2020 test. Thus, as currently written, MIAX Rule 321 would not permit the Exchange to designate any Equity Members⁹ of MIAX PEARL Equities to participate in the industry-wide test for 2020 because no Equity Members will have the requisite trading volume on MIAX PEARL Equities upon which a designation can be made.

To address the unique circumstances for disaster recovery testing in 2020, the year in which MIAX PEARL Equities will become operational, the Exchange proposes to amend Chapter III of the Exchange's Rules to provide that for calendar year 2020, notwithstanding paragraph (b) and Interpretations and Policies .01 of MIAX Rule 321, which assigns the

⁶ See MIAX Rule 321(a), (b).

⁷ See MIAX Rule 321(b).

⁸ See Securities Exchange Act Release No. 89563 (August 14, 2020), 85 FR 51510 (August 20, 2020) ("Equities Approval Order").

⁹ See Exchange Rule 1901.

Exchange responsibility of “identifying Members that account for a meaningful percentage of the Exchange’s overall volume,” the Exchange will instead designate at least three Equity Members on MIAX PEARL Equities who have a meaningful percentage of trading volume in NMS Stocks across the other equity exchanges. This would allow the Exchange to identify Equity Members for industry-wide disaster recovery testing in the absence of the metrics that will be used in the ordinary course to designate such firms.

The Exchange believes that designating at least three Equity Members who are likely already to be participating in the industry-wide test by virtue of their trading activities on other exchanges is likely to reduce the burdens associated with being designated for disaster recovery testing by MIAX PEARL in absence of significant trading volume on MIAX PEARL Equities. Moreover, to reduce the burdens on such Equity Members, the Exchange proposes, where possible, to designate firms that have already established connections to its backup systems. This is intended to address the “notice” requirements in the existing Rule 321.01 The Exchange believes that designating three or more such firms is reasonably designed to provide the minimum necessary for the maintenance of fair and orderly markets in the event of the activation of such plans. The Exchange intends to notify Equity Members of their designation for disaster recovery testing no later than September 30, 2020. With respect to industry-wide disaster recovery testing in 2021 and beyond, the Exchange will issue one or more regulatory circulars establishing the standards to be used for determining which Equity Members contribute a meaningful percentage of the Exchange’s overall volume and thus are required to participate in functional and performance testing. Such standards will be informed by the Exchange's actual market and trading data, in accordance with MIAX Rule 321(a)-(b).

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Section 6(b)(5),¹¹ in particular, because 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 facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that its proposed methodology of designating Equity Members who have meaningful levels of trading activity on other exchanges and who have established connectivity to the Exchange's backup systems is consistent with the protection of investors and the public interest. The Exchange believes that the proposed rule change will ensure that the Equity Members necessary to ensure the maintenance of fair and orderly markets in the event of the activation of the Exchange's disaster recovery plans have been designated consistent with MIAX Rule 321 and Rule 1004 of Regulation SCI. Specifically, the proposal will address the unique circumstances of industrywide testing taking place within a short time of when the Exchange commences operations. The Exchange believes that the proposed rule change balances the objectives of having Equity Members participate in industry-wide disaster recovery testing, including Exchange's backup systems, and the burdens on such Equity Members who, at the time of designation, will not have traded on MIAX PEARL Equities.

As set forth in the SCI Adopting Release, "SROs have the authority, and legal responsibility, under Section 6 of the Exchange Act, to adopt and enforce rules (including rules to comply with Regulation SCI's requirements relating to BC/DR testing) applicable to their

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

members or participants that are designed to, among other things, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.”¹² The Exchange believes that this proposal is consistent with such authority and legal responsibility.

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 that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change is designed to promote fair competition among brokers and dealers and exchanges by ensuring the Exchange can designate Equity Members to participate in mandatory disaster recovery testing pursuant to Regulation SCI for calendar year 2020. The Exchange believes that designating three or more such firms is reasonably designed to provide the minimum necessary for the maintenance of fair and orderly markets in the event of the activation of such plans, thereby promoting intermarket competition between exchanges in furtherance of the principles of Section 11A(a)(1) of the Act.¹³

With respect to intramarket competition, the proposed rule change seeks to reduce the burdens on Equity Members by only designating Equity Members who are likely already participating in the industry-wide test by virtue of their trading activities on other exchanges. Under the proposed rule change, the Exchange will designate firms that have already established connections to the Exchange’s backup systems. Consequently, the Exchange does not believe

¹² See supra note 5, at 72350.

¹³ 15 U.S.C. 78k-1(a)(1).

that the proposed rule change would impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

Written comments were neither solicited nor received.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁴ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁵

A proposed rule change filed under Rule 19b-4(f)(6)¹⁶ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁷ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay to permit the Exchange to notify Members of their designation earlier than would be possible without a waiver of the operative delay. The Commission believes that waiver of the 30-day operative delay is consistent with the protection

¹⁴ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁵ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires the Exchange to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹⁶ 17 CFR 240.19b-4(f)(6).

¹⁷ 17 CFR 240.19b-4(f)(6)(iii).

of investors and the public interest because it would provide designated members additional time to receive notice of their designation, and thus prepare for disaster recovery testing with the Exchange's backup systems. Accordingly, the Commission waives the 30-day operative delay and designates the proposal operative upon filing.¹⁸

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>);
- or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-PEARL-2020-14 on the subject line.

Paper Comments:

¹⁸ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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

All submissions should refer to File Number SR-PEARL-2020-14. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange.

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-PEARL-2020-14 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.¹⁹

J. Matthew DeLesDernier
Assistant Secretary

¹⁹ 17 CFR 200.30-3(a)(12).