

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-90394; File No. SR-PEARL-2020-23)

November 10, 2020

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Exchange's Certificate of Formation, Amended and Restated Limited Liability Company Agreement, and the By-Laws

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 28, 2020, MIAX PEARL, LLC ("MIAX PEARL" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange is filing a proposal to amend the Exchange's Certificate of Formation (the "Certificate of Formation"), Amended and Restated Limited Liability Company Agreement (the "LLC Agreement"), and the By-Laws (the "By-Laws

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

Changes to the Certificate of Formation

The Exchange proposes to amend the Certificate of Formation to make several non-substantive, administrative and clarifying changes. The Exchange first proposes to amend the title of the document in order to accurately reflect the amended document title as the "Amended and Restated Certificate of Formation of MIAX PEARL, LLC," in accordance with the proposed amendments described below.

On February 11, 2016, the Exchange executed the original Certificate of Formation. The Exchange proposes delete the entire sentence in the first paragraph and insert a sentence to clarify that the Certificate of Formation has been executed in accordance with Section 18-208 of the Limited Liability Company Act, and that this document is being amended to restate the original Certificate of Formation. With the proposed changes, the first paragraph of the Certificate of Formation will be as follows:

This filing has been executed and filed in accordance with Section 18-208 of the Limited Liability Company Act. This document is being executed for the purpose of amending and restating the original Certificate of Formation, filed on February 11, 2016, under file number: 5880323.

The Exchange also proposes to amend the signature line for the Certificate of Formation by deleting the current signature line and inserting, as the signatory, "Barbara J. Comly, EVP, General Counsel & Corporate Secretary."

The purpose of the proposed changes to the Certificate of Formation are to ensure that the Exchange's Certificate of Formation accurately reflects correct, current information, including the name of the amended document, in order to reduce potential investor or market participant confusion.

Changes to the LLC Agreement

The Exchange proposes to amend the LLC Agreement to make several non-substantive, administrative and clarifying changes. On March 7, 2016, the Exchange executed the original Limited Liability Company Agreement (the "original LLC Agreement"). On December 5, 2016, the Exchange executed the Amended and Restated Limited Liability Company Agreement (the "Amended LLC Agreement"), which restated the original LLC Agreement. The first paragraph of the LLC Agreement also refers to the document as the "Operating Agreement."³ The Exchange now proposes to amend the first paragraph of the LLC Agreement to reflect the current amended document, which will be the "Second Amended and Restated Limited Liability Company Agreement" (the "Second LLC Agreement"). Accordingly, the Exchange proposes to update the text in the first paragraph of the LLC Agreement to reflect this change, thereby deleting reference to the name and date of the original LLC Agreement, and inserting the name and date of the Amended LLC Agreement as being amended and restated by the Second LLC Agreement. The Exchange also proposes to delete the reference to the "Operating Agreement," for purposes of clarity and uniformity.⁴ With the proposed changes, the first paragraph of the LLC Agreement will be as follows:

Miami International Holdings, Inc., a Delaware corporation, the sole member (the "LLC Member") of **MIAX PEARL, LLC**, a Delaware limited liability company (the "Company"), pursuant to and in accordance with the Delaware Limited

³ See LLC Agreement.

⁴ See id.

Liability Company Act, 6 Del.C. § 18-101, et seq. (the “LLC Act”), hereby declares the following to be the Second Amended and Restated Limited Liability Company Agreement (the “LLC Agreement”) of the Company which amends and restates in its entirety the Amended and Restated Limited Liability Company Agreement dated December 5, 2016 of the Company. Capitalized terms not otherwise defined herein shall have the meanings set forth on Schedule A to this LLC Agreement.

Next, the Exchange proposes to amend Section 3 of the LLC Agreement to amend the address referenced therein for the Exchange’s principal place of business. The Exchange has increased its office space at its current address of 7 Roszel Road, Princeton, New Jersey 08540.⁵ The new mailing and principal address for the Princeton, New Jersey office is now 7 Roszel Road, Suite 1A, Princeton, New Jersey 08540. Accordingly, the Exchange proposes to amend Section 3 of the LLC Agreement to reflect the change in mailing address from “5th Floor” to “Suite 1A.”

The Exchange proposes to amend Section 4 of the LLC Agreement to update the address of the Exchange’s registered office in the State of Delaware, as well as the Exchange’s registered agent. In particular, the Exchange proposes to delete the address and company name of the registered office and registered agent, respectively, as contained in the current LLC Agreement. The Exchange proposes to insert in Section 4 of the LLC Agreement the updated address of its registered office and the name of the Exchange’s registered agent. With the proposed changes, Section 4 of the LLC Agreement will be as follows:

The registered office of the Company required by the LLC Act to be maintained in the State of Delaware shall be 1209 Orange Street in the City of Wilmington, County of New Castle, ZIP Code 19801 or such other office as the Board of Directors may designate from time to time. The registered agent for the Company shall be The Corporation Trust Company, or such other registered agent as the Board of Directors may designate from time to time.

⁵ See id., Section 3.

Next, the Exchange proposes to amend Section 6 of the LLC Agreement to clarify that Miami International Holdings, Inc. (“MIH”) is the sole LLC Member⁶ of the Exchange and to update the address for MIH, as described above. The Exchange also proposes to delete the reference to “Schedule B” and the following sentence: “The LLC Member was admitted to the Company as an LLC Member of the Company upon its execution of a counterpart signature page to the Operating Agreement at which time it acquired 100% of the limited liability company interests of the Company.” The purpose of these changes is for administrative ease and to provide uniformity throughout the LLC Agreement. The Exchange also proposes to delete “Schedule B” from the LLC Agreement, which simply states that the LLC Member is MIH. This is duplicative information as the term “LLC Member” is defined in Schedule A to the LLC Agreement.⁷ Accordingly, the Exchange proposes to delete Schedule B and move the information regarding the LLC Member into Section 6.

Next, the Exchange proposes to amend Section 9 of the LLC Agreement to delete the last sentence of Section 9(a), which states, “The Directors as of the date of this LLC Agreement are set forth on Schedule C attached hereto.” Schedule C of the LLC Agreement provides the names and classifications of the Board of Directors of the Exchange as of December 5, 2016. The Exchange proposes to delete Schedule C, and all references to Schedule C, as further described below, from the LLC Agreement. The names and classifications of the Board of Directors of the Exchange are publicly available information through the Commission’s Electronic Data

⁶ “LLC Member” means Miami International Holdings, Inc., as the sole member of the Company. See LLC Agreement, Schedule A, Definitions.

⁷ See id.

Gathering, Analysis, and Retrieval (“EDGAR”) website.⁸ The purpose of these changes is for administrative ease and to provide uniformity throughout the LLC Agreement.

The Exchange also proposes to amend the first sentence of Section 9(c) to clarify that the By-Laws⁹ of the Exchange have been adopted, thereby deleting the phrase “hereby adopt the,” in order to clarify that this has already occurred. Further, the Exchange proposes to delete the reference to “Exhibit A” in Section 9(c). Exhibit A currently provides that the By-Laws of MIAX PEARL are a separate document from the LLC Agreement. The Exchange provides the By-Laws as publicly available information on its website. Accordingly, additional reference to the By-Laws in Exhibit A is duplicative.

Next, the Exchange proposes to amend Section 29 of the LLC Agreement to delete the reference to “Schedule B” and provide a cross-reference to Section 6 for the address of the LLC Member, as described above. These proposed changes will provide clarity and uniformity throughout the LLC Agreement.

The Exchange next proposes to amend “Schedule A, Definitions” to the LLC Agreement to delete the definition for “Operating Agreement.” As described above, the Exchange is amending and restating the LLC Agreement for the second time and as such, is removing the reference in the first paragraph of the LLC Agreement to the “Operating Agreement.”

Changes to the By-Laws

The Exchange proposes to amend the By-Laws to make several non-substantive, administrative and clarifying changes. First, the Exchange proposes to amend the title of the By-

⁸ See <https://www.sec.gov/edgar/searchedgar/companysearch.html> and <https://www.sec.gov/oiea/Article/edgarguide.html> for EDGAR filing information.

⁹ “By-Laws” has the meaning set forth in Section 9(c). See LLC Agreement, Schedule A, Definitions.

Laws to insert the phrase “Amended and Restated.” The Exchange proposes to amend the first paragraph of the By-Laws to make several non-substantive, administrative changes. In particular, the Exchange proposes to amend the first paragraph of the By-Laws to insert the phrase “Amended and Restated” in front of the first time the word “By-Laws” appears and to delete the phrases “Amended and Restated” and “dated as of December 5, 2016,” both of which refer to the LLC Agreement.¹⁰ The purpose of these changes is for administrative ease and to provide uniformity among the titles of each of the Exchange’s corporate documents. With the proposed changes, the first paragraph of the By-Laws will be as follows:

These Amended and Restated By-Laws have been established as the By-Laws of **MIAXPEARL, LLC**, a Delaware limited liability company (the "Company"), pursuant to the Limited Liability Company Agreement of the Company (as amended from time to time, the "LLC Agreement"), and, together with the LLC Agreement, constitute the limited liability company agreement of the Company within the meaning of the LLC Act (as defined in the LLC Agreement). In the event of any inconsistency between the LLC Agreement and these By-Laws, the provision of the LLC Agreement shall control.

Finally, the Exchange proposes to make technical and conforming changes to the time and date of effectiveness on the signature pages of each of the Certificate of Formation, LLC Agreement and By-Laws. The Exchange also proposes to amend the signature line of the LLC Agreement to insert the full title of the signatory as “Thomas P. Gallagher, Chairman and Chief Executive Officer.”

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.¹¹ Specifically, the Exchange believes the proposed rule change is

¹⁰ See By-Laws.

¹¹ 15 U.S.C. 78f(b).

consistent with the Section 6(b)(5)¹² requirements that the rules of an exchange be 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 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹³ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed changes to the Certificate of Formation, LLC Agreement and By-Laws are designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest. The Exchange believes that the proposed changes are non-substantive, administrative changes and will reduce potential investor or market participant confusion regarding the Exchange's corporate documents. Further, the Exchange believes the proposed changes are not material and will have no impact on the governance, ownership, or operations of the Exchange.

The Exchange believes its proposal to amend the Certificate of Formation, LLC Agreement and By-Laws are consistent with the Act as the changes are to maintain accurate

¹² 15 U.S.C. 78f(b)(5).

¹³ Id.

information regarding, among other things, the Exchange's address, registered agent and registered office.

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 does not believe the proposed rule change will impose any burden on intra-market and inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed changes are not intended to address competitive issues but rather are administrative, non-substantive changes that are concerned solely with updating the Certificate of Formation, LLC Agreement and By-Laws to reflect current, accurate information.

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) of the Act¹⁴ and Rule 19b-4(f)(6) thereunder.¹⁵

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization 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.

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹⁶ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)¹⁷ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. As the proposed rule change raises no novel issues and promotes accuracy and consistency within the Exchange's Certificate of Formation, LLC Agreement, and By-Laws, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.¹⁸

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 change should be approved or disapproved.

¹⁶ 17 CFR 240.19b-4(f)(6).

¹⁷ 17 CFR 240.19b-4(f)(6)(iii).

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

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-2020-23 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-PEARL-2020-23. 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-2020-23, 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).