SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-90400; File No. SR-PEARL-2020-24)

November 12, 2020

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the MIAX PEARL Equities Fee Schedule

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on October 30, 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 amend the fee schedule applicable for MIAX PEARL Equities, an equities trading facility of the Exchange (the "Fee Schedule").[3] The proposed fees are scheduled to become operative November 2, 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.

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 See Exchange Rule 1901.

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

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

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

1. Purpose

The purpose of the proposed rule change is to amend the Fee Schedule applicable to MIAX PEARL Equities to increase the rebate for displayed orders[4] on the MIAX PEARL Equities Book[5] that add liquidity in securities priced at or above $1.00. The Exchange currently provides a rebate of $0.0028 per share to displayed orders that add liquidity in securities priced at or above $1.00. The Exchange now proposes to increase the rebate for displayed orders that add liquidity in securities priced at or above $1.00 to $0.0032 per share.

The purpose of this proposed change is for business and competitive reasons. As a new entrant into the equities market, the Exchange initially adopted the rebate of $0.0028 per share for displayed orders that add liquidity in securities priced at or above $1.00 in order to encourage market participants to submit displayed orders to the Exchange. The Exchange now believes that it is appropriate to increase the rebate to $0.0032 per share for displayed orders that add liquidity in securities price at or above $1.00, thereby continuing to encourage market participants to

4 See Exchange Rule 2614(c)(3).

5 The term "MIAX PEARL Equities Book" means the electronic book of orders in equity securities maintained by the System. See Exchange Rule 1901.

submit more displayed orders to the Exchange and increase displayed order flow. The Exchange believes that this proposal will result in encouraging market participants to submit more displayed orders to the Exchange, thereby increasing displayed order liquidity, which benefits all Exchange participants by providing more trading opportunities and tighter spreads.

The proposed rebate increase will become effective on November 2, 2020. The Exchange does not propose any other changes to the MIAX PEARL Equities Fee Schedule.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(4) of the Act[7] in particular, in that it is an equitable allocation of reasonable fees and other charges among its members and issuers and other persons using its facilities. As discussed above, the Exchange operates in a highly fragmented and competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or rebates/incentives to be insufficient. The Exchange believes that the Fee Schedule reflects a simple and competitive pricing structure, which is designed to incentivize market participants to add aggressively priced displayed liquidity and direct their order flow to the Exchange. The Exchange believes the proposed increased rebate for displayed orders that add liquidity in securities priced at or above $1.00 will continue to promote price discovery and price formation and deepen liquidity that is subject to the Exchange's transparency, regulation, and oversight as

6 15 U.S.C. 78f(b).

7 15 U.S.C. 78f(b)(4) and (5).

an exchange, thereby enhancing market quality to the benefit of all Equity Members[8] and investors.

In particular, the Exchange believes the proposed increase to the rebate for displayed orders in securities priced above $1.00 from $0.0028 to $0.0032 per share is reasonable because it would uniformly provide a rebate of $0.0032 per share to displayed orders in all equity securities priced at or above $1.00 traded on the Exchange. Further, the Exchange believes the proposed increased rebate will encourage additional order flow on the Exchange, which may result in greater liquidity to the benefit of all market participants on the Exchange by providing more trading opportunities. The Exchange also believes that it is reasonable, equitable and not unfairly discriminatory to provide a higher rebate to displayed orders that add liquidity than to non-displayed orders as this rebate structure is designed to incentivize Equity Members to send the Exchange displayed orders, thereby contributing to price discovery and price formation, consistent with the overall goal of enhancing market quality. The Exchange further believes that it is appropriate and reasonable to provide a standard rebate of $0.0032 per share for displayed orders that add liquidity in securities priced at or above $1.00 because this rebate is consistent with similar rebates provided by other exchanges.[9] The proposed increased rebate is not unfairly discriminatory because it will apply equally to all Equity Members.

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8 The term "Equity Member" means a Member authorized by the Exchange to transact business on MIAX PEARL Equities. See Exchange Rule 1901.

9 For example, the New York Stock Exchange, Inc. ("NYSE") fee schedule sets forth various tiers that provide the ability of their Designated Market Makers to receive a rebate as high as $0.0045 per share. See https://www.nyse.com/markets/nyse/trading-info/fees. Nasdaq Stock Market LLC ("Nasdaq") fee schedule set forth various tiers that provide the ability of a firm to receive a rebate as high as $0.0033 per share. See http://nasdaqtrader.com/Trader.aspx?id=PriceListTrading2. The Cboe BZX Exchange, Inc. ("BZX") sets forth various tiers that provide the ability of a firm to receive a rebate as high as $0.0033 per share or higher. See the Tier 1 of the Total Volume Tier and Tier

Further, the Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."[10]

As the Commission itself recognized, the market for trading services in NMS stocks has become "more fragmented and competitive."[11] Indeed, equity trading is currently dispersed across 16 exchanges,[12] 31 alternative trading systems,[13] and numerous broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange currently has more than 20% market share (whether including or excluding auction volume).[14] Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, the Exchange only recently launched trading operations

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2 of the Step Up Tier available at https://markets.cboe.com/us/equities/membership/fee_schedule/bzx/.

10 See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (File No. S7-10-04) ("Regulation NMS").

11 See Securities Exchange Act Release No. 82873 (March 14, 2018), 83 FR 13008 (March 26, 2018) (File No. S7-05-18) (Transaction Fee Pilot for NMS Stocks).

12 See Cboe Global Markets, U.S Equities Market Volume Summary, available at https://markets.cboe.com/us/equities/market_share/.

13 See FINRA ATS Transparency Data, available at https://otctransparency.finra.org/otctransparency/AtsIssueData. A list of alternative trading systems registered with the Commission is available at https://www.sec.gov/foia/docs/atslist.htm.

14 See supra note 12.

on September 25, 2020, and thus has a market share of approximately less than 1% of executed volume of equities trading.

The Exchange has designed its proposed increased rebate to balance the need to attract order flow as a new exchange entrant with the desire to continue to provide a simple fee structure to market participants. The Exchange believes its proposed increased rebate structure enables the Exchange to compete for order flow. The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue to reduce use of certain categories of products, in response to fee changes. With respect to nonmarketable orders which provide liquidity on an exchange, Equity Members can choose from any one of the 16 currently operating registered exchanges to route such order flow. Accordingly, competitive forces reasonably constrain exchange transaction fees that relate to orders that would provide displayed liquidity on an exchange. Stated otherwise, changes to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow. Given this competitive environment, the Exchange's proposed increased rebate represents a reasonable attempt to attract order flow to a new exchange entrant.

B. <u>Self-Regulatory Organization's Statement on Burden on Competition</u>

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. Rather, the Exchange believes that the proposed change would encourage the submission of additional order flow to a public exchange, thereby promoting market depth, execution incentives and enhanced execution opportunities, as well as price discovery and transparency for all Equity Members and non-Equity Members. As a result, the Exchange believes that the proposed change furthers the

Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."[15]

The Exchange does not believe that the proposed increased rebate will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that the proposed increased rebate will increase competition and is intended to draw volume to the Exchange. The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to new or different pricing structures being introduced into the market. Accordingly, competitive forces constrain the Exchange's transaction fees and rebates, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. As a new exchange, the Exchange faces intense competition from existing exchanges and other non-exchange venues that provide markets for equities trading. Although this increased rebate is intended to attract liquidity to the Exchange, most other exchanges in operation today already offer multiple incentives to their participants, including tiered pricing that provides higher rebates or discounted executions, and other exchanges will be able to modify such incentives in order to compete with the Exchange.

Further, while pricing incentives do cause shifts of liquidity between trading centers, market participants make determinations on where to provide liquidity or route orders to take liquidity based on factors other than pricing, including technology, functionality, and other considerations. Consequently, the Exchange believes that the degree to which its proposed increased rebate could impose any burden on competition is extremely limited, and does not

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15 See supra note 10.

believe that such increased rebate would burden competition of Equity Members or competing venues in a manner that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange does not believe that the proposed increased rebate will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed increased rebate will apply equally to all Equity Members. The proposed increased rebate is intended to encourage market participants to add liquidity to the Exchange by providing a rebate that is comparable to those offered by other exchanges, which the Exchange believes will help to encourage Equity Members to send orders to the Exchange to the benefit of all Exchange participants. As the proposed rates are equally applicable to all market participants, the Exchange does not believe there is any burden on intramarket competition.

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,[16] and Rule 19b-4(f)(2)[17] 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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16 15 U.S.C. 78s(b)(3)(A)(ii).

17 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. Please include File Number SR-PEARL-2020-24 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-2020-24. 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-2020-24 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.[18]

J. Matthew DeLesDernier
Assistant Secretary

[18] 17 CFR 200.30-3(a)(12).