

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 24	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No. * SR 2021 - * 42 Amendment No. (req. for Amendments *)
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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"/>			
Pilot <input type="checkbox"/>			Extension of Time Period for Commission Action * <input type="checkbox"/>			Date Expires * <input type="text"/>		
Rule								
<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 Section 806(e)(1) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934 Section 3C(b)(2) * <input type="checkbox"/>
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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 amend the MIAX Pearl Equities Fee Schedule to amend certain connectivity fees to the disaster recovery facility.

**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 * Michael	Last Name * Slade
Title * AVP, Associate Counsel	
E-mail * mslade@miami-holdings.com	
Telephone * (609) 897-8499	Fax

**Signature**  
Pursuant to the requirements of the Securities Exchange of 1934, MIAX PEARL, LLC has duty caused this filing to be signed on its behalf by the undersigned thereunto duty authorized.

Date 09/10/2021	(Title *)
By Michael Slade (Name *)	AVP, Associate Counsel

*Michael Slade*Date: 2021.09.10 15:30:33 -04'00'

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



Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

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

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.

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SR-PEARL-2021-42 - 19b4 revised 9-

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

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)

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SR-PEARL-2021-42-Exhibit 1.docx

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

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)

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

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.

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Exhibit Sent As Paper Document

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

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.

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Exhibit Sent As Paper Document

**Exhibit 4 - Marked Copies**

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.

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**Exhibit 5 - Proposed Rule Text**

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

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SR-PEARL-2021-42 - Exhibit 5 clean 9

**Partial Amendment**

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.

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## 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 amend the fee schedule applicable for MIAX Pearl Equities, an equities trading facility of the Exchange (the “Fee Schedule”).<sup>3</sup>

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1, and a copy of the applicable section of the Fee Schedule is attached hereto as Exhibit 5.

(b) Inapplicable.

(c) Inapplicable.

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

The proposed rule change was approved by the Chief Executive Officer of the Exchange or his designee pursuant to authority delegated by the MIAX Pearl Board of Directors on January 28, 2021. Exchange staff will advise the Board of Directors of any action taken pursuant to delegated authority. No other action by the Exchange is necessary for the filing of the proposed rule change.

Questions and comments on the proposed rule changes may be directed to Chris Solgan, VP, Senior Counsel, at (609) 423-9414.

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

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

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

<sup>3</sup> See Exchange Rule 1901.

a. Purpose

The Exchange proposes to amend Section 2) of the Fee Schedule to: (1) waive certain monthly connectivity fees for Equity Members<sup>4</sup> who connect to the Exchange's disaster recovery facility; and (2) make a minor, non-substantive correction to the headings for Sections 2)a) and b). The Exchange originally filed this proposal on September 1, 2021 (SR-PEARL-2021-39). The Exchange has withdrawn SR-PEARL-2021-39 and refiled this proposal.

Fee Waiver for Connection to the Disaster recovery facility

The Exchange proposes to amend Section 2)a) of the Fee Schedule to waive certain monthly connectivity fees for Equity Members who connect to the Exchange's disaster recovery facility for testing purposes only, as described below. Currently, the Exchange assesses monthly fees of \$1,000 per connection and \$3,000 per connection for Equity Members that connect to the Exchange's disaster recovery facility via a 1 Gigabit ("Gb") ultra-low latency ("ULL") connection or a 10Gb ULL connection, respectively.

The Exchange now proposes to waive the disaster recovery facility 1Gb ULL monthly fee for a single 1Gb ULL connection for each Equity Member that is designated by the Exchange to participate in required testing in accordance with Regulation Systems Compliance and Integrity ("Regulation SCI")<sup>5</sup>, and pursuant to Chapter III of the Exchange's Rules, so long as that same single connection is used for Regulation SCI testing purposes only. The Exchange proposes that this waiver apply to each month in which the designated Equity Member is required to maintain that single 1Gb ULL connection to the disaster recovery facility for

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<sup>4</sup> The term "Equity Member" is a Member authorized by the Exchange to transact business on MIAAX Pearl Equities. See Exchange Rule 1901.

<sup>5</sup> See Securities Exchange Act Release No. 73639 (November 19, 2014), 79 FR 72252 (December 5, 2014) ("SCI Adopting Release").

Regulation SCI testing purposes, as described above. Accordingly, each Equity Member that is required to connect to the Exchange's disaster recovery facility in accordance with Regulation SCI and Chapter III of the Exchange's Rules and who uses that connection solely to fulfill those testing requirements, will receive the fee waiver for a single 1Gb ULL connection. The proposed fee waiver will not be available to an Equity Member that utilizes that same 1Gb ULL connection to the disaster recovery facility for trading in addition to Regulation SCI testing purposes.

The Exchange notes that the proposed waiver will apply uniformly to Equity Members who currently maintain a 1Gb ULL connection to the disaster recovery facility and those Equity Members that newly elect to connect to the disaster recovery facility. Again, both current and future 1Gb ULL connections must be used for Regulation SCI testing purposes only. The proposed fee waiver will only apply to a single 1Gb ULL connection to the disaster recovery facility and each additional 1Gb ULL connection to the disaster recovery facility will continue to be charged the current monthly rate of \$1,000 per connection. The Exchange does not propose to waive the monthly network connectivity fee for the 10Gb ULL connection to the disaster recovery facility or make any other changes to network connectivity fees.

#### Technical Corrections to the Fee Schedule

Next, the Exchange proposes to amend the headings for Sections 2)a) and b) of the Fee Schedule to make minor, non-substantive edits. Currently, the headings for Sections 2)a) and b) of the Fee Schedule read as follows, "Monthly Member Network Connectivity Fee," and "Monthly Non-Member Network Connectivity Fee," respectively. The Exchange now proposes to make a minor, non-substantive correction to amend each heading to make the word "Fee" plural to reflect that more than one fee is provided for in each section. With the proposed

changes, the headings for Sections 2)a) and b) of the Fee Schedule will read as follows, “Monthly Member Network Connectivity Fees,” and “Monthly Non-Member Network Connectivity Fees,” respectively.

#### Implementation

The proposed changes are immediately effective. The Exchange does not propose any other changes to the MIAX Pearl Equities Fee Schedule.

#### b. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act<sup>6</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act,<sup>7</sup> in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange members and issuers and other persons using its facilities, and 6(b)(5) of the Act,<sup>8</sup> 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 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.

Equity Members connect to the disaster recovery facility for several reasons, including: (1) to fulfill the requirement to participate in the Exchange’s annual business continuity and disaster recovery (“BC/DR”) testing in connection with the requirements of Regulation SCI<sup>9</sup>; and (2) for redundancy and trading purposes in a fail over situation. With respect to the BC/DR

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<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>8</sup> 15 U.S.C. 78f(b)(1) and (b)(5).

<sup>9</sup> See supra note 5.

plans of the Exchange (defined as an “SCI entity” under Regulation SCI), including the Exchange’s backup systems, paragraph (a) of Rule 1004 of Regulation SCI requires each SCI entity to, “[e]stablish standards for the designation of those members or participants that the SCI entity reasonably determines are, taken as a whole, the minimum necessary for the maintenance of fair and orderly markets in the event of the activation of such plans.”<sup>10</sup> Paragraph (b) of Rule 1004 further requires each SCI entity to “[d]esignate members or participants pursuant to the standards established in paragraph (a) of [Rule 1004] and require participation by such designated members or participants in scheduled functional and performance testing of the operation of such plans, in the manner and frequency specified by the SCI entity, provided that such frequency shall not be less than once every 12 months.”<sup>11</sup> Pursuant to Rule 1004 of Regulation SCI, each Equity Member of the Exchange is required to connect to the disaster recovery facility and take part in the annual testing. This means that, as currently contemplated in the Fee Schedule, each Equity Member must utilize and purchase at least one 1Gb ULL connection to the disaster recovery facility to fulfill this testing requirement. Accordingly, the Exchange believes it is reasonable to waive the monthly fee for Equity Members that are designated by the Exchange for required testing in accordance with Regulation SCI, and pursuant to Chapter III of the Exchange’s Rules, where that same single connection is used for Regulation SCI testing purposes only.

The Exchange believes that its proposal is reasonable because it waives the monthly fee for Equity Members that are required to connect to the disaster recovery facility and only utilize one 1Gb ULL connection solely to fulfill the annual BC/DR testing requirements under Rule

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<sup>10</sup> 17 CFR 242.1004(a).

<sup>11</sup> 17 CFR 242.1004(b).

1004 of Regulation SCI and do not use that same connection for trading purposes. The Exchange believes that the proposed waiver is reasonable to further ensure Equity Members that need to participate in Exchange testing are able to do so without also incurring a charge for the required connection. 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 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.”<sup>12</sup> The Exchange believes that this proposal is consistent with such authority and legal responsibility.

The Exchange believes that the proposal represents an equitable allocation of reasonable dues, fees, and other charges and is not unreasonably discriminatory in that it applies uniformly to all similarly situated Equity Members. The proposed waiver for a single 1Gb ULL connection to the disaster recovery facility will apply uniformly to Equity Members designated by the Exchange to fulfill their Regulation SCI testing requirements. Specifically, an Equity Member who currently has a 1Gb ULL connection to the disaster recovery facility and only utilizes such connection for Regulation SCI testing purposes will receive the fee waiver for that single connection going forward. Likewise, any Equity Member newly designated by the Exchange for Regulation SCI testing who does not currently have a 1Gb ULL connection will now be able to utilize a single 1Gb ULL connection to the disaster recovery facility for free, so long as that

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<sup>12</sup> See SCI Adopting Release, supra note 5, at 72350.



Equity Member only utilizes the new connection for Regulation SCI testing purposes only, as described herein. The Exchange does not propose to amend any of the rates for its connectivity fees.

Further, the Exchange believes that the proposal represents an equitable allocation of reasonable dues, fees, and other charges and is not unreasonably discriminatory to firms that utilize the 10Gb ULL connection to the disaster recovery facility because those firms likely not only utilize those connections for testing, but also trading and redundancy purposes due to the increased size of the connection. Each Equity Member that has a 10Gb ULL connection to the disaster recovery facility is able to utilize a single 1Gb ULL connection solely for Regulation SCI testing purposes if that firm so desired.

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>13</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>14</sup> in particular, in that it is an equitable allocation of reasonable fees and not unfairly discriminatory because non-Members do not have the same requirements as Equity Members relating to Regulation SCI's requirements for BC/DR testing. As such, non-Members are not required to connect to the disaster recovery facility at all. It is a business decision of each non-Member whether to connect to the disaster recovery facility and, if so, whether to utilize a 1Gb ULL connection and/or a 10Gb ULL connection. Further, non-Members themselves can and often do have their own customer base that utilizes the non-Member's connection to the Exchange. However, that non-Member can charge its customers any amount it wants and recoup its costs to connect to the Exchange.

#### **4. Self-Regulatory Organization's Statement on Burden on Competition**

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<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(4) and (5).

The Exchange does not believe that the proposed fee change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

#### Inter-Market Competition

The Exchange believes that the proposed rule change will not impose any burden on inter-market competition. The proposed rule change is not a competitive filing but rather is designed to ensure that Equity Members that are designated by the Exchange and required to connect to the disaster recovery facility solely to fulfill their annual BC/DR testing requirements under Rule 1004 of Regulation SCI are able to do so. Accordingly, the Exchange believes that the proposed change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposal is not a competitive proposal but rather is necessary for the Exchange and designated Equity Members to comply with annual testing requirements of Regulation SCI.

#### Intra-Market Competition

The Exchange believes that its proposal will not impose any undue burden on intra-market competition because the fee waiver applies equally to all Equity Members that only utilize a single 1Gb ULL connection to the disaster recovery facility to participate in Regulation SCI testing. The fee waiver will apply to designated Equity Members who currently have at least one 1Gb ULL connection to the disaster recovery facility and to newly designated Equity Members who all have to participate in Regulation SCI testing. The Exchange believes the proposal does not impose any undue burden on intra-market competition between Equity Members who utilize 10Gb ULL connections to the disaster recovery facility because those firms utilize the 10Gb ULL connections for redundancy and trading purposes throughout the course of the year. Each Equity Member with a 10Gb ULL connection that is designated by the Exchange

to participate in the annual BC/DR testing already uses that connection for the Regulation SCI testing. Additionally, the Exchange believes that its proposal will not impose any undue burden on intra-market competition on non-Members because non-Members do not have the same requirements as Equity Members relating to Regulation SCI's requirements for BC/DR testing. Non-Members are not required to connect to the disaster recovery facility at all and it is a business decision of each non-Member whether to connect to the disaster recovery facility and, if so, whether to utilize a 1Gb ULL connection and/or a 10Gb ULL connection.

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)**

Pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>15</sup> and Rule 19b-4(f)(2) thereunder<sup>16</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.

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

Not applicable.

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

Not applicable.

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

<sup>16</sup> 17 CFR 240.19b-4.

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

Not applicable.

**11. Exhibits**

1. Completed notice of proposed rule change for publication in the Federal Register.
5. Copy of the applicable section of the Fee Schedule.

**EXHIBIT 1**SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. SR-PEARL-2021-42)

September \_\_\_\_, 2021

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

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 September 10, 2021, 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”).<sup>3</sup>

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

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

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

<sup>3</sup> See Exchange Rule 1901.

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 Section 2) of the Fee Schedule to: (1) waive certain monthly connectivity fees for Equity Members<sup>4</sup> who connect to the Exchange's disaster recovery facility; and (2) make a minor, non-substantive correction to the headings for Sections 2)a) and b). The Exchange originally filed this proposal on September 1, 2021 (SR-PEARL-2021-39). The Exchange has withdrawn SR-PEARL-2021-39 and refiled this proposal.

Fee Waiver for Connection to the Disaster recovery facility

The Exchange proposes to amend Section 2)a) of the Fee Schedule to waive certain monthly connectivity fees for Equity Members who connect to the Exchange's disaster recovery facility for testing purposes only, as described below. Currently, the Exchange assesses monthly fees of \$1,000 per connection and \$3,000 per connection for Equity Members that connect to the Exchange's disaster recovery facility via a 1 Gigabit ("Gb") ultra-low latency ("ULL") connection or a 10Gb ULL connection, respectively.

The Exchange now proposes to waive the disaster recovery facility 1Gb ULL monthly fee for a single 1Gb ULL connection for each Equity Member that is designated by the Exchange to participate in required testing in accordance with Regulation Systems Compliance and

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<sup>4</sup> The term "Equity Member" is a Member authorized by the Exchange to transact business on MIA X Pearl Equities. See Exchange Rule 1901.



Integrity (“Regulation SCI”)<sup>5</sup>, and pursuant to Chapter III of the Exchange’s Rules, so long as that same single connection is used for Regulation SCI testing purposes only. The Exchange proposes that this waiver apply to each month in which the designated Equity Member is required to maintain that single 1Gb ULL connection to the disaster recovery facility for Regulation SCI testing purposes, as described above. Accordingly, each Equity Member that is required to connect to the Exchange’s disaster recovery facility in accordance with Regulation SCI and Chapter III of the Exchange’s Rules and who uses that connection solely to fulfill those testing requirements, will receive the fee waiver for a single 1Gb ULL connection. The proposed fee waiver will not be available to an Equity Member that utilizes that same 1Gb ULL connection to the disaster recovery facility for trading in addition to Regulation SCI testing purposes.

The Exchange notes that the proposed waiver will apply uniformly to Equity Members who currently maintain a 1Gb ULL connection to the disaster recovery facility and those Equity Members that newly elect to connect to the disaster recovery facility. Again, both current and future 1Gb ULL connections must be used for Regulation SCI testing purposes only. The proposed fee waiver will only apply to a single 1Gb ULL connection to the disaster recovery facility and each additional 1Gb ULL connection to the disaster recovery facility will continue to be charged the current monthly rate of \$1,000 per connection. The Exchange does not propose to waive the monthly network connectivity fee for the 10Gb ULL connection to the disaster recovery facility or make any other changes to network connectivity fees.

#### Technical Corrections to the Fee Schedule

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<sup>5</sup> See Securities Exchange Act Release No. 73639 (November 19, 2014), 79 FR 72252 (December 5, 2014) (“SCI Adopting Release”).

Next, the Exchange proposes to amend the headings for Sections 2)a) and b) of the Fee Schedule to make minor, non-substantive edits. Currently, the headings for Sections 2)a) and b) of the Fee Schedule read as follows, “Monthly Member Network Connectivity Fee,” and “Monthly Non-Member Network Connectivity Fee,” respectively. The Exchange now proposes to make a minor, non-substantive correction to amend each heading to make the word “Fee” plural to reflect that more than one fee is provided for in each section. With the proposed changes, the headings for Sections 2)a) and b) of the Fee Schedule will read as follows, “Monthly Member Network Connectivity Fees,” and “Monthly Non-Member Network Connectivity Fees,” respectively.

### Implementation

The proposed changes are immediately effective. 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<sup>6</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act,<sup>7</sup> in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange members and issuers and other persons using its facilities, and 6(b)(5) of the Act,<sup>8</sup> 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 facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and

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<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>8</sup> 15 U.S.C. 78f(b)(1) and (b)(5).

open market and a national market system and, in general, to protect investors and the public interest.

Equity Members connect to the disaster recovery facility for several reasons, including: (1) to fulfill the requirement to participate in the Exchange’s annual business continuity and disaster recovery (“BC/DR”) testing in connection with the requirements of Regulation SCI<sup>9</sup>; and (2) for redundancy and trading purposes in a fail over situation. With respect to the BC/DR plans of the Exchange (defined as an “SCI entity” under Regulation SCI), including the Exchange’s backup systems, paragraph (a) of Rule 1004 of Regulation SCI requires each SCI entity to, “[e]stablish standards for the designation of those members or participants that the SCI entity reasonably determines are, taken as a whole, the minimum necessary for the maintenance of fair and orderly markets in the event of the activation of such plans.”<sup>10</sup> Paragraph (b) of Rule 1004 further requires each SCI entity to “[d]esignate members or participants pursuant to the standards established in paragraph (a) of [Rule 1004] and require participation by such designated members or participants in scheduled functional and performance testing of the operation of such plans, in the manner and frequency specified by the SCI entity, provided that such frequency shall not be less than once every 12 months.”<sup>11</sup> Pursuant to Rule 1004 of Regulation SCI, each Equity Member of the Exchange is required to connect to the disaster recovery facility and take part in the annual testing. This means that, as currently contemplated in the Fee Schedule, each Equity Member must utilize and purchase at least one 1Gb ULL connection to the disaster recovery facility to fulfill this testing requirement. Accordingly, the Exchange believes it is reasonable to waive the monthly fee for Equity Members that are

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<sup>9</sup> See supra note 5.

<sup>10</sup> 17 CFR 242.1004(a).

<sup>11</sup> 17 CFR 242.1004(b).

designated by the Exchange for required testing in accordance with Regulation SCI, and pursuant to Chapter III of the Exchange's Rules, where that same single connection is used for Regulation SCI testing purposes only.

The Exchange believes that its proposal is reasonable because it waives the monthly fee for Equity Members that are required to connect to the disaster recovery facility and only utilize one 1Gb ULL connection solely to fulfill the annual BC/DR testing requirements under Rule 1004 of Regulation SCI and do not use that same connection for trading purposes. The Exchange believes that the proposed waiver is reasonable to further ensure Equity Members that need to participate in Exchange testing are able to do so without also incurring a charge for the required connection. 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 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."<sup>12</sup> The Exchange believes that this proposal is consistent with such authority and legal responsibility.

The Exchange believes that the proposal represents an equitable allocation of reasonable dues, fees, and other charges and is not unreasonably discriminatory in that it applies uniformly to all similarly situated Equity Members. The proposed waiver for a single 1Gb ULL connection to the disaster recovery facility will apply uniformly to Equity Members designated by the

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<sup>12</sup> See SCI Adopting Release, supra note 5, at 72350.

Exchange to fulfill their Regulation SCI testing requirements. Specifically, an Equity Member who currently has a 1Gb ULL connection to the disaster recovery facility and only utilizes such connection for Regulation SCI testing purposes will receive the fee waiver for that single connection going forward. Likewise, any Equity Member newly designated by the Exchange for Regulation SCI testing who does not currently have a 1Gb ULL connection will now be able to utilize a single 1Gb ULL connection to the disaster recovery facility for free, so long as that Equity Member only utilizes the new connection for Regulation SCI testing purposes only, as described herein. The Exchange does not propose to amend any of the rates for its connectivity fees.

Further, the Exchange believes that the proposal represents an equitable allocation of reasonable dues, fees, and other charges and is not unreasonably discriminatory to firms that utilize the 10Gb ULL connection to the disaster recovery facility because those firms likely not only utilize those connections for testing, but also trading and redundancy purposes due to the increased size of the connection. Each Equity Member that has a 10Gb ULL connection to the disaster recovery facility is able to utilize a single 1Gb ULL connection solely for Regulation SCI testing purposes if that firm so desired.

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>13</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>14</sup> in particular, in that it is an equitable allocation of reasonable fees and not unfairly discriminatory because non-Members do not have the same requirements as Equity Members relating to Regulation SCI's requirements for BC/DR testing. As such, non-Members are not required to connect to the disaster recovery facility at all. It is a business decision of each non-Member whether to connect to the disaster

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<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(4) and (5).

recovery facility and, if so, whether to utilize a 1Gb ULL connection and/or a 10Gb ULL connection. Further, non-Members themselves can and often do have their own customer base that utilizes the non-Member's connection to the Exchange. However, that non-Member can charge its customers any amount it wants and recoup its costs to connect to the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed fee change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Inter-Market Competition

The Exchange believes that the proposed rule change will not impose any burden on inter-market competition. The proposed rule change is not a competitive filing but rather is designed to ensure that Equity Members that are designated by the Exchange and required to connect to the disaster recovery facility solely to fulfill their annual BC/DR testing requirements under Rule 1004 of Regulation SCI are able to do so. Accordingly, the Exchange believes that the proposed change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposal is not a competitive proposal but rather is necessary for the Exchange and designated Equity Members to comply with annual testing requirements of Regulation SCI.

Intra-Market Competition

The Exchange believes that its proposal will not impose any undue burden on intra-market competition because the fee waiver applies equally to all Equity Members that only utilize a single 1Gb ULL connection to the disaster recovery facility to participate in Regulation SCI testing. The fee waiver will apply to designated Equity Members who currently have at least one 1Gb ULL connection to the disaster recovery facility and to newly designated Equity Members who all have to participate in Regulation SCI testing. The Exchange believes the



proposal does not impose any undue burden on intra-market competition between Equity Members who utilize 10Gb ULL connections to the disaster recovery facility because those firms utilize the 10Gb ULL connections for redundancy and trading purposes throughout the course of the year. Each Equity Member with a 10Gb ULL connection that is designated by the Exchange to participate in the annual BC/DR testing already uses that connection for the Regulation SCI testing. Additionally, the Exchange believes that its proposal will not impose any undue burden on intra-market competition on non-Members because non-Members do not have the same requirements as Equity Members relating to Regulation SCI's requirements for BC/DR testing. Non-Members are not required to connect to the disaster recovery facility at all and it is a business decision of each non-Member whether to connect to the disaster recovery facility and, if so, whether to utilize a 1Gb ULL connection and/or a 10Gb ULL connection.

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>15</sup> and Rule 19b-4(f)(2)<sup>16</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>15</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>16</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-2021-42 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-2021-42. 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-2021-42 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>17</sup>

Vanessa Countryman  
Secretary

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

New text is underlined;  
 Deleted text is in [brackets]

**Exhibit 5**

**MIAX Pearl Equities Exchange  
 Fee Schedule**

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**2) System Connectivity Fees**

**a) Monthly Member Network Connectivity Fees**

<b>Member Network Connectivity Per Month</b>	<b>Primary/ Secondary Facility 1 Gigabit ULL Per Connection</b>	<b>Disaster Recovery Facility 1 Gigabit ULL Per Connection</b>	<b>Disaster Recovery Facility 10 Gigabit ULL Per Connection</b>	<b>Primary/ Secondary Facility 10 Gigabit ULL Per Connection</b>
Individual Firm	\$1,000.00	\$1,000.00	\$3,000.00	\$3,500.00

Monthly Member Network Connectivity fees for connectivity with the Primary/Secondary Facility will be assessed in any month the Member is credentialed to use any of the MIAX Pearl Equities APIs or Market Data feeds in the production environment and will be pro-rated when a Member makes a change to the connectivity (by adding or deleting connections) with such pro-rated fees based on the number of trading days that the Member has been credentialed to utilize any of the MIAX Pearl Equities APIs or Market Data feeds in the production environment through such connection, divided by the total number of trading days in such month multiplied by the applicable monthly rate. Monthly Member Network Connectivity fees for connectivity with the Disaster Recovery Facility will be assessed in each month during which the Member has established connectivity with the Disaster Recovery Facility. The Disaster Recovery Facility 1 Gigabit ULL Per Connection fee for Members shall be waived for a single 1 Gigabit ULL connection to the Disaster Recovery Facility where such Member is designated by the Exchange for required testing in accordance with Regulation SCI and pursuant to Chapter III of the Exchange’s Rules and that same single 1 Gigabit ULL connection is used for testing purposes only. This waiver shall apply to each month in which the designated Member is required to maintain that single 1 Gigabit ULL connection to the Disaster Recovery Facility for testing purposes, as described above.

**b) Monthly Non-Member Network Connectivity Fees**

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c) – e) No change.

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