

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-93047; File No. SR-PEARL-2021-42)

September 17, 2021

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 Relating to Disaster Recovery Facility 1 Gigabit ULL Per Connection Fee for Members

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 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”).³

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.

³ 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 Members⁴ 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 The Exchange has withdrawn SR-PEARL-2021-39 and refiled this proposal.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

⁴ The term “Equity Member” is a Member authorized by the Exchange to transact business on MIAX Pearl Equities. See Exchange Rule 1901.

Integrity (“Regulation SCI”)⁵, 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.

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

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.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act⁶ in general, and furthers the objectives of Section 6(b)(4) of the Act,⁷ 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,⁸ 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

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4).

⁸ 15 U.S.C. 78f(b)(1) and (b)(5).

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 SCI⁹; 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.”¹⁰ 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.”¹¹ 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

⁹ See supra note 5.

¹⁰ 17 CFR 242.1004(a).

¹¹ 17 CFR 242.1004(b).

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 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."¹² 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

¹² See SCI Adopting Release, supra note 5, at 72350.

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 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 Act¹³ in general, and furthers the objectives of Section 6(b)(4) of the Act¹⁴ in particular, in that it is an equitable allocation of reasonable fees and not unfairly discriminatory because non-Members do

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(4) and (5).

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.

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,¹⁵ and Rule 19b-4(f)(2)¹⁶ 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

¹⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁶ 17 CFR 240.19b-4(f)(2).

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-2021-42 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-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 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-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.¹⁷

J. Matthew DeLesDernier
Assistant Secretary

¹⁷ 17 CFR 200.30-3(a)(12).