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July 13, 2017

Via Electronic Mail (rule-coments@sec.gov)

Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Re: MIAX PEARL LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the MIAX Pearl Fee Schedule to Establish an Options Regulatory Fee (File No. SR-PEARL-2017-26)

Dear Mr. Fields:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ appreciates the opportunity to comment on the above-referenced filing (the “Filing” or the “PEARL Filing”) made by MIAX PEARL, Inc. (“PEARL”) with the Securities and Exchange Commission (“Commission”). In the Filing, PEARL proposes rule amendments to clarify how the Options Regulatory Fee (“ORF”) is assessed and collected. Specifically, PEARL states that:

The per-contract ORF will continue to be assessed by MIAX PEARL to each MIAX PEARL Member for all options transactions... cleared, or ultimately cleared by the Member which are cleared by OCC in the “customer” range, regardless of the exchange on which the transaction occurs. The ORF will be collected by OCC on behalf of MIAX PEARL from either (1) a Member that was the ultimate clearing firm for the transaction or (2) a non-Member that was the ultimate clearing firm where a member was the executing clearing firm for the Transaction.²

For the reasons outlined below, SIFMA recommends that the Commission suspend the PEARL Filing under the applicable provisions of the Securities Exchange Act of 1934 (“Exchange Act”).

¹ SIFMA is the voice of the U.S. securities industry. We represent the broker-dealers, banks and asset managers whose nearly 1 million employees provide access to the capital markets, raising over \$2.5 trillion for businesses and municipalities in the U.S., serving clients with over \$20 trillion in assets and managing more than \$67 trillion in assets for individual and institutional clients including mutual funds and retirement plans. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>.

² See Securities Exchange Act Release No. 34-80875 (June 7, 2017), 82 FR 27096 (June 13, 2017).

The filing was submitted by PEARL subsequent to File No. SR-PEARL-2017-09 and SR-PEARL-2017-15, both of which related to the ORF. The views expressed in SIFMA's comment letters³ on each filing remain relevant and we respectfully refer the Commission to those SIFMA letters. In the Filing, PEARL clearly outlines which trades are subject to the ORF, as well as the collection process utilized to determine who the fees should be collected from.

SIFMA understands that PEARL has certain statutory obligations to regulate its members and that there has been a traditional practice of exchanges using fees to defray their regulatory expenses. It is appropriate for MIAX PEARL to codify the collection of ORF for those trades that take place on the exchange, and collect the ORF from the ultimate firm that clears the trade, including non-Members.

However, SIFMA fundamentally opposes the premise that ORF should be assessed by PEARL for all options transactions cleared or ultimately cleared by a member regardless of the exchange on which the transaction occurs.⁴ In addition, we disagree the assertion that that charging the ORF across markets "will avoid having Members direct their trades to other markets in order to avoid the fee and to thereby avoid paying for their fair share of regulation." Like other options exchanges, PEARL claims that, if the ORF did not apply to activity across markets then a member would send their orders to the least regulated exchange.⁵ This claim does not hold since fourteen of the fifteen listed-options exchanges assess ORF for those transactions that clear in the customer range at OCC. The only exchange that does not assess ORF is Nasdaq MRX, LLC, (market share of 0.13% on June 27, 2017⁶).

SIFMA also queries MIAX PEARL's statutory ability to establish a fee schedule for transactions that occur on Exchanges other than MIAX PEARL. As proposed in the Filing, PEARL concedes the Exchange has no visibility into Member executions, other than reviewing clearing firm data from OCC. MIAX PEARL justifies the collection from Clearing Firm Members because "As a practical matter, when a transaction that is subject to the ORF is not executed on the Exchange, the Exchange lacks the information necessary to identify the order entering member for that transaction. There are countless order entering market participants, and each day such participants can and often do drop their connection to one market center and establish themselves as participants on another. For these reasons, it is not possible for the Exchange to identify, and thus assess fees such as an ORF, on order entering participants on away markets on a given trading day."⁷

Since MIAX PEARL has no visibility into activity on away exchanges, it is logical that MIAX PEARL (and other listed-options exchanges) utilize OCC's services to collect ORF from their Clearing Members. OCC provides the Exchange with a report which allows them to identify and assess ORF to their Clearing Members, or the ultimate firm that clears the trade. MIAX PEARL's reliance on clearing records from OCC to determine if a Clearing Member participated in a transaction on an away Exchange, and the practice of collecting it from the firm that ultimately clears the trade, **should not** be the standard practice employed by multiple

³ See [SIFMA Comment Letter on Release No. 34-80423](#); [File No. SR_PEARL-15](#) and [SIFMA Comment Letter on Release No. 34-80035](#); [File No. SR-PEARL-2017-09](#).

⁴ See 82 FR at 27096.

⁵ See 82 FR at 27098.

⁶ Source: OCC Volume and Open Interest – June 27, 2017.

⁷ See 82 FR at 27097.

listed options exchanges “because it is more efficient for the operation of the Exchange”⁸. The Exchange rationalizes the collection of ORF on all transactions regardless of the exchange the execution occurred on because “The Exchange has a statutory obligation to enforce compliance by Members and their associated persons under the Act and the rules of the Exchange and to surveil for other manipulative conduct by market participants (including non-Members) trading on the Exchange.”⁹ SIFMA acknowledges the Exchange’s obligation, but disagree that it justifies the collection of ORF on transactions that occur on other exchanges. MIAX PEARL does not assess *any other* fee when a Member trades away from their Exchange, as evidenced by their fee schedule¹⁰. SIFMA vehemently objects that the Options Regulatory Fee should be a special carve-out that allows an Exchange to assess a fee when they do not participate in the trade.

SIFMA continues to urge the Commission to review the relevant rules and operational processes that are currently in place at the options exchanges that impose an ORF to ensure that they are both supported by relevant exchange rules and the Exchange Act itself, including Section 6(b)(4) of the Exchange Act, which expressly states that an exchange’s rules must provide for the “equitable allocation of reasonable...fees, and other charges among its members...and other persons using its facilities.”¹¹

SIFMA recommends that, in addition to reviewing current practices, the Commission should require the options exchanges to maintain standardized files that would enhance transparency and ensure the ORF is charged uniformly. Each exchange should disclose fully and publicly how ORF revenue is allocated and to detail the percentage of regulatory costs covered by the ORF. Each exchange should provide a breakdown of the types of costs associated with its regulation and supervision of members’ customer options business. SIFMA remains concerned that exchanges could use ORF revenue to offset costs that go beyond appropriate regulatory expenses, and could in fact, be used to subsidize startup costs for a new options exchange. SIFMA recommends that the SEC require that MIAX PEARL disclose the following details, including the total collection from ORF, and the associated expenses that it funds. At a minimum, MIAX PEARL should disclose the following expenses, including staff, including management and the cost of technology utilized to support regulation.

In closing, while nuances exist between the models, SIFMA reiterates our support for a model that only assesses ORF to those transactions that occur on the exchange, as opposed to a transaction that occurs on *any* exchange. SIFMA agrees that for those transactions that occur on MIAX PEARL, ORF should be collected from the firm that ultimately clears the transaction.

For the reasons set forth above, SIFMA recommends that the Commission suspend the PEARL Filing since it does not support the practice of collecting ORF on transactions that occur on away markets. SIFMA re-affirms our view that this is an overly broad application of the ORF, and we urge the Commission to reconsider the ability of any options exchange to charge an ORF on transactions executed on other exchanges.

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⁸ *Id.*

⁹ *Id.*

¹⁰ MIAX PEARL fee schedule: https://www.miaxoptions.com/sites/default/files/page-files/MIAX_PEARL_Fee_Schedule_06302017.pdf.

¹¹ 15 U.S.C.A. § 78f(b)(4) (2016) (emphasis added).

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SIFMA greatly appreciates the Commission's consideration of our comments on File No. SR-PEARL-2017-26. We would be pleased to discuss these comments in greater detail with the staff of the Commission. If you have any questions, please contact Ellen Greene at [REDACTED] or [REDACTED].

Sincerely,



Ellen Greene
Managing Director

cc: The Honorable Jay Clayton, Chairman, SEC
The Honorable Michael S. Piwowar, Commissioner, SEC
The Honorable Kara M. Stein, Commissioner, SEC

Heather Seidel, Acting Director, Division of Trading and Markets, SEC
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