

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-90894; File No. SR-PEARL-2020-37)

January 11, 2021

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend its Fee Schedule Regarding Tape B Securities

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 31, 2020, MIAX PEARL, LLC (“MIAX PEARL” or “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the 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 the 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 changes will become effective January 1, 2021.

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.

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 MIAX PEARL Equities Fee Schedule to increase the rebate for displayed orders⁴ that add liquidity in Tape B securities priced at or above \$1.00 to the MIAX PEARL Equities Book⁵ from \$0.0032 to \$0.0035 per share. The Exchange also proposes to decrease the fee for orders that remove liquidity in Tape B Securities priced at or above \$1.00 from the MIAX PEARL Equities Book from \$0.0028 to \$0.0027 per share.

The Exchange does not propose to amend the rates to add or remove liquidity in Tapes A and C securities. The rebate provided to displayed orders that add liquidity in Tapes A and C securities priced at or above \$1.00 will remain \$0.0032 per share and the fee to remove liquidity in Tape A and C securities priced at or above \$1.00 will remain \$0.0028 per share. Lastly, the Exchange proposes to amend the Fee Schedule to delineate the rates applicable to displayed

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. The term "System" means the automated trading system used by the Exchange for the trading of securities. See Exchange Rule 100.

orders that add liquidity and orders that remove liquidity in Tapes A, B, and C securities priced at or above \$1.00.

The Exchange operates in a highly competitive market in which 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. More specifically, the Exchange is only one of several equities venues (including both registered exchanges and various alternative trading systems) to which market participants may direct their order flow and execute their trades. Indeed, equity trading is currently dispersed across 16 exchanges,⁶ 31 alternative trading systems,⁷ and numerous broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly available information, no single registered equities exchange currently has more than approximately 20% of total market share.⁸ Thus, in such a low-concentrated and highly competitive market, no single equities trading venue possesses significant pricing power in the execution of trades, and, the Exchange currently represents a very small percentage of the overall market.

The purpose of this proposed change is for business and competitive reasons. As a new entrant into the equities market, the Exchange initially adopted a rebate of \$0.0028 per share for displayed orders that add liquidity and fee of \$0.0028 per share for orders that remove liquidity

⁶ See Cboe Global Markets, U.S Equities Market Volume Summary, available at https://markets.cboe.com/us/equities/market_share/.

⁷ 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/atlist.htm>.

⁸ See supra note 6.

in securities priced at or above \$1.00.⁹ The Exchange later increased the rebate for displayed orders that add liquidity in securities priced at or above \$1.00 to \$0.0032 per share to further encourage market participants to submit displayed orders to the Exchange.¹⁰ The fee to remove liquidity in securities priced at or above \$1.00 has been unchanged since its adoption.

The Exchange now believes that it is appropriate to increase the rebate to \$0.0035 per share for displayed orders that add liquidity in Tape B securities priced at or above \$1.00. The Exchange believes that this proposed increased rebate will result in encouraging market participants to submit more displayed orders to the Exchange, thereby increasing displayed order liquidity on the MIAX PEARL Equities Book, which should benefit all Exchange participants by providing more trading opportunities and tighter spreads. The Exchange also believes a corresponding change to decrease the fee to \$0.0027 per share for orders that remove liquidity in Tape B securities priced at or above \$1.00 is similarly appropriate. The Exchange believes the decreased fee would similarly encourage market participants to enter liquidity removing orders on the Exchange, thereby increasing the execution opportunities for the displayed orders resting on the MIAX PEARL Equities Book.

The proposed changes will become effective on January 1, 2021. The Exchange does not propose any other changes to the MIAX PEARL Equities Fee Schedule.

⁹ See Securities Exchange Act Release No. 90102 (October 6, 2020), 85 FR 64559 (October 13, 2020) (SR-PEARL-2020-17).

¹⁰ See Securities Exchange Act Release No. 90400 (November 12, 2020), 85 FR 73550 (November 18, 2020) (SR-PEARL-2020-24).

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act¹¹ in general, and furthers the objectives of Section 6(b)(4) of the Act¹² 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 amended 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 proposed changes are not unfairly discriminatory because they will apply equally to all Equity Members.¹³

The Exchange believes the proposed increased rebate for displayed orders that add liquidity in Tape B securities priced at or above \$1.00 will continue to promote price discovery and price formation and deepen liquidity, thereby enhancing market quality to the benefit of all Equity Members and investors. The Exchange further believes the proposed increased rebate is reasonable because it would uniformly provide a rebate of \$0.0035 per share to displayed orders in Tape B securities priced at or above \$1.00 traded on the Exchange. The proposed rebate is

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(4) and (5) [sic].

¹³ The term “Equity Member” means a Member authorized by the Exchange to transact business on MIA X PEARL Equities. See Exchange Rule 1901.

also comparable to that provided by other exchanges.¹⁴ However, those exchanges provide a tiered pricing structure that provides a comparable rebate for orders that add liquidity in Tape B securities only when certain volume thresholds are met.¹⁵

The Exchange believes its proposed decreased fee of \$0.0027 per share for orders that remove liquidity in Tape B securities priced at or above \$1.00 is reasonable, equitable and not unfairly discriminatory because it will apply to all orders in Tape B securities from all market participants and regardless of whether they are displayed or non-displayed. The proposed decreased fee should encourage market participants to enter liquidity removing orders on the Exchange, thereby increasing the execution opportunities for the displayed orders resting on the MIAX PEARL Equities Book. Therefore, coupled with the proposed increased rebate, the decreased fee should improve liquidity and price discovery in Tape B securities on the MIAX PEARL Equities Book. Lastly, the Exchange notes that the proposed decreased fee is also comparable to or lower than the standard fee to remove liquidity charged by other exchanges.¹⁶

¹⁴ See the NYSE Arca, Inc. (“NYSE Arca”) fee schedule available at https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf (providing a rebate as high as \$0.0034 per share for Tape B securities under Step Up Tier 4). See also footnotes 1, 12, and 13 of the Cboe BZX Exchange, Inc. (“BZX”) fee schedule available at https://www.cboe.com/us/equities/membership/fee_schedule/ (providing cumulative rebate as high as \$0.0034 per share for Tape B Securities).

¹⁵ Id.

¹⁶ See the Cboe EDGX Exchange, Inc. (“EDGX”) available at https://www.cboe.com/us/equities/membership/fee_schedule/edgx/ (providing a standard fee of \$0.0027 per share to orders that remove liquidity). See also the New York Stock Exchange LLC (“NYSE”) fee schedule available at https://www.nyse.com/markets/nyse/trading-info/fees_ (providing fees to “take” liquidity ranging from \$0.0024 - \$0.00275 depending on the type of market participant, order, and execution).

Providing separate rates for orders in Tape A, B, and C securities is also equitable and reasonable because it is similar to pricing structures offered by other national securities exchanges that the Exchange directly competes with.¹⁷ Further, the Exchange believes the proposed changes will encourage additional order flow on the Exchange resulting in greater liquidity to the benefit of all market participants on the Exchange by providing more trading opportunities in Tape B securities. The Exchange also continues to believe 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.

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.”¹⁸

¹⁷ See the NYSE Arca fee schedule available at https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf (providing separate varying fees and rebates for Tape A, B, and C securities with a rebate as high as \$0.0034 per share for Tape B securities under Step Up Tier 4). See also footnotes 1, 12, and 13 of the BZX fee schedule available at https://www.cboe.com/us/equities/membership/fee_schedule/ (providing tier rebates only for Tape B Securities).

¹⁸ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (File No. S7-10-04) (“Regulation NMS”).

As the Commission itself recognized, the market for trading services in NMS stocks has become “more fragmented and competitive.”¹⁹ Indeed, equity trading is currently dispersed across 16 exchanges,²⁰ 31 alternative trading systems,²¹ 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).²² Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, the Exchange only recently launched trading operations 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 changes to continue 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 changes will enable it to continue to compete for order flow, particularly in Tape B securities. 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 or decrease use of certain categories of products, in response to fee changes. With respect to non-marketable 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

¹⁹ 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).

²⁰ See supra note 6.

²¹ See supra note 7.

²² See supra note 6.

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 changes represent a reasonable attempt to attract order flow to a new exchange entrant.

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. 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."²³

The Exchange does not believe that the proposed fee change 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 fee change 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 decrease 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

²³ See supra note 18.

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. The proposed increased rebate and decreased fee for Tape B securities are intended to attract liquidity to the Exchange, much like the way other exchanges offer multiple incentives to their participants, including tiered pricing that provides higher rebates or discounted executions. These other exchanges will be able to modify such incentives 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 changes could impose any burden on competition is extremely limited, and does not believe that such increased rebate and decreased fee for Tape B securities would burden competition between 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 and decreased fee for Tape B securities will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed changes 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. Meanwhile, the proposed decreased fee is similarly intended to encourage market participants to send liquidity removing orders to attempt to execute against the orders that add liquidity to the MIAX

PEARL Equities Book. The proposed rates are equally applicable to all market participants and, therefore, the Exchange does not believe they will impose any inappropriate 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,²⁴ and Rule 19b-4(f)(2)²⁵ 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.

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

²⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

²⁵ 17 CFR 240.19b-4(f)(2).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-PEARL-2020-37 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-2020-37. 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, D.C. 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such 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-2020-37, 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.²⁶

J. Matthew DeLesDernier
Assistant Secretary

²⁶ 17 CFR 200.30-3(a)(12).