

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-90906; File No. SR-PEARL-2020-38)

January 12, 2021

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 31, 2020, MIAX PEARL, LLC (“MIAX PEARL” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX PEARL Fee Schedule (the “Fee Schedule”) for the Exchange’s options market.

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 the proposed rule change. The text of these statements may be examined at the places specified

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 the Add/Remove Tiered Rebates/Fees set forth in Section 1)a) of the Fee Schedule that apply to the MIAX PEARL Market Maker³ Origin, to: (i) modify the volume threshold for the alternative Volume Criteria in Tier 2; and (ii) add a new, alternative Volume Criteria to Tier 3.

Background

The Exchange currently assesses transaction rebates and fees to all market participants which are based upon the total monthly volume executed by the Member⁴ on MIAX PEARL in the relevant, respective origin type (not including Excluded Contracts)⁵ (as the numerator) expressed as a percentage of (divided by) TCV⁶ (as the denominator). In addition, the per

³ “Market Maker” means a Member registered with the Exchange for the purpose of making markets in options contracts traded on the Exchange and that is vested with the rights and responsibilities specified in Chapter VI of Exchange Rules. See the Definitions Section of the Fee Schedule.

⁴ “Member” means an individual or organization that is registered with the Exchange pursuant to Chapter II of the Exchange Rules for purposes of trading on the Exchange as an “Electronic Exchange Member” or “Market Maker.” Members are deemed “members” under the Exchange Act. See the Definitions Section of the Fee Schedule and Exchange Rule 100.

⁵ “Excluded Contracts” means any contracts routed to an away market for execution. See the Definitions Section of the Fee Schedule.

⁶ “TCV” means total consolidated volume calculated as the total national volume in those classes listed on MIAX PEARL for the month for which the fees apply, excluding consolidated volume executed during the period time in which the Exchange experiences an “Exchange System Disruption” (solely in the option classes of the affected Matching Engine (as defined below)). The term Exchange System Disruption, which is defined in the Definitions section of the Fee Schedule, means an outage of a Matching Engine or collective Matching Engines for a period of two consecutive hours or more, during

contract transaction rebates and fees are applied retroactively to all eligible volume for that origin type once the respective threshold tier (“Tier”) has been reached by the Member. The Exchange aggregates the volume of Members and their Affiliates.⁷ Members that place resting liquidity, i.e., orders resting on the book of the MIAX PEARL System,⁸ are paid the specified “maker” rebate (each a “Maker”), and Members that execute against resting liquidity are assessed the specified “taker” fee (each a “Taker”). For opening transactions and ABBO⁹ uncrossing transactions, per contract transaction rebates and fees are waived for all market

trading hours. The term Matching Engine, which is also defined in the Definitions section of the Fee Schedule, is a part of the MIAX PEARL electronic system that processes options orders and trades on a symbol-by-symbol basis. Some Matching Engines will process option classes with multiple root symbols, and other Matching Engines may be dedicated to one single option root symbol (for example, options on SPY may be processed by one single Matching Engine that is dedicated only to SPY). A particular root symbol may only be assigned to a single designated Matching Engine. A particular root symbol may not be assigned to multiple Matching Engines. The Exchange believes that it is reasonable and appropriate to select two consecutive hours as the amount of time necessary to constitute an Exchange System Disruption, as two hours equates to approximately 1.4% of available trading time per month. The Exchange notes that the term “Exchange System Disruption” and its meaning have no applicability outside of the Fee Schedule, as it is used solely for purposes of calculating volume for the threshold tiers in the Fee Schedule. See the Definitions Section of the Fee Schedule.

⁷ “Affiliate” means (i) an affiliate of a Member of at least 75% common ownership between the firms as reflected on each firm’s Form BD, Schedule A, or (ii) the Appointed Market Maker of an Appointed EEM (or, conversely, the Appointed EEM of an Appointed Market Maker). An “Appointed Market Maker” is a MIAX PEARL Market Maker (who does not otherwise have a corporate affiliation based upon common ownership with an EEM) that has been appointed by an EEM and an “Appointed EEM” is an EEM (who does not otherwise have a corporate affiliation based upon common ownership with a MIAX PEARL Market Maker) that has been appointed by a MIAX PEARL Market Maker, pursuant to the process described in the Fee Schedule. See the Definitions Section of the Fee Schedule.

⁸ The term “System” means the automated trading system used by the Exchange for the trading of securities. See Exchange Rule 100.

⁹ “ABBO” means the best bid(s) or offer(s) disseminated by other Eligible Exchanges (defined in Exchange Rule 1400(g) and calculated by the Exchange based on market information received by the Exchange from OPRA. See the Definitions Section of the Fee Schedule and Exchange Rule 100.

participants. Finally, Members are assessed lower transaction fees and receive lower rebates for order executions in standard option classes in the Penny Interval Program¹⁰ (“Penny Classes”) than for order executions in standard option classes which are not in the Penny Interval Program (“Non-Penny Classes”), where Members are assessed higher transaction fees and receive higher rebates.

Alternative Volume Criteria Threshold Change in Tier 2

The Exchange proposes to amend the Add/Remove Tiered Rebates/Fees set forth in Section 1)a) of the Fee Schedule that apply to the MIAX PEARL Market Maker Origin, to modify the volume threshold for the alternative Volume Criteria in Tier 2. The MIAX PEARL Market Maker Origin set forth in Section 1)a) of the Fee Schedule currently provides an alternative Volume Criteria in Tier 2, which is based upon the total monthly volume executed by a MIAX PEARL Market Maker collectively in SPY/QQQ/IWM options on MIAX PEARL, expressed as a percentage of total consolidated national volume in SPY/QQQ/IWM options.¹¹ Pursuant to this alternative Volume Criteria, a Market Maker is able to reach the Tier 2 threshold if the Market Maker’s total executed monthly volume, not including Excluded Contracts, in SPY/QQQ/IWM options on MIAX PEARL is above 0.45% of total consolidated national monthly volume in SPY/QQQ/IWM options. For this calculation, volume that is from resting liquidity (Maker) and taking liquidity (Taker) in SPY/QQQ/IWM options is counted towards the alternative Volume Criteria, and the 0.45% threshold does not have to be reached individually in each of the three symbols. A Market Maker is able to qualify for Tier 2 rebates and fees which

¹⁰ See Securities Exchange Act Release No. 88992 (June 2, 2020), 85 FR 35142 (June 8, 2020) (SR-PEARL-2020-06).

¹¹ See Securities Exchange Act Release No. 84592 (November 14, 2018), 83 FR 58646 (November 20, 2018) (SR-PEARL-2018-23).

will then be applicable to all volume executed by the MIAX PEARL Market Maker on MIAX PEARL. The two Volume Criteria available for Tier 2 is based upon either: (a) the total monthly volume executed by the Market Maker in all options classes on MIAX PEARL, not including Excluded Contracts, (as the numerator), expressed as a percentage of (divided by) TCV (as the denominator); or (b) the total monthly volume executed by the MIAX PEARL Market Maker collectively in SPY/QQQ/IWM options on MIAX PEARL, not including Excluded Contracts, (as the numerator), expressed as a percentage of (divided by) SPY/QQQ/IWM TCV¹² (as the denominator). Once either Volume Criteria threshold in Tier 2 is reached by the Market Maker, the Tier 2 per contract rebates and fees apply to all volume in all options classes executed by that MIAX PEARL Market Maker on MIAX PEARL.

The Exchange proposes to modify the threshold for the alternative Volume Criteria in Tier 2 from 0.45% to 0.75% of total consolidated national monthly volume in SPY/QQQ/IWM options. With the proposed change, a Market Maker will be able to reach the alternative Volume Criteria in Tier 2 if the Market Maker's total executed monthly volume, not including Excluded Contracts, in SPY/QQQ/IWM options on MIAX PEARL is above 0.75% of total consolidated national monthly volume in SPY/QQQ/IWM options. The Exchange is not modifying the calculation method for a Market Maker to reach the alternative Volume Criteria in Tier 2, only the threshold percentage. The Exchange proposes to make the corresponding change to the volume threshold percentage described in the explanatory paragraph for the alternative Volume Criteria for Tier 2 that is below the tables in Section 1)a) of the Fee Schedule.

¹² "SPY/QQQ/IWM TCV" means total consolidated volume in SPY, QQQ, and IWM calculated as the total national volume in SPY, QQQ, and IWM for the month for which the fees apply, excluding consolidated volume executed during the period of time in which the Exchange experiences an Exchange System Disruption (solely in SPY, QQQ, or IWM options). See the Definitions Section of the Fee Schedule.

The purpose of this proposed change is for business and competitive reasons. In order to attract order flow, the Exchange initially set its volume threshold for the alternative Volume Criteria in Tier 2 at a meaningful low level. The Exchange now believes that it is appropriate to adjust this volume threshold so that it is more in line with the volume threshold that Market Makers currently achieve in SPY/QQQ/IWM options on MIAX PEARL. The Exchange believes that the proposed volume threshold will still remain highly competitive such that the threshold should enable the Exchange to continue to attract order flow in SPY/QQQ/IWM options and maintain market share. The Exchange cannot predict with certainty how many Market Makers would achieve the alternative Volume Criteria in Tier 2 with the increased threshold percentage, but the Exchange anticipates that each Market Maker that is currently in Tier 2 with that alternative method will likely continue to reach that Tier.

Alternative Volume Criteria for Tier 3

The Exchange proposes to amend the Add/Remove Tiered Rebates/Fees set forth in Section 1)a) of the Fee Schedule that apply to the MIAX PEARL Market Maker Origin, to add a new, alternative Volume Criteria to Tier 3, based upon the total monthly volume executed in SPY options on MIAX PEARL by a MIAX PEARL Market Maker when adding liquidity. Pursuant to this alternative Volume Criteria, Market Makers will qualify for: (i) Maker rebates of (\$0.44) in SPY, QQQ and IWM options for their Market Maker Origin when trading against Origins not Priority Customer, and (ii) Maker rebates of (\$0.42) in SPY, QQQ and IWM options for their Market Maker Origin when trading against Priority Customer Origins, if the Market Maker executes at least 1.10% in SPY options when adding liquidity. The Exchange proposes that, in Tier 3 for MIAX PEARL Market Makers, the alternative Volume Criteria (above 1.10% in SPY when Adding Liquidity) will be calculated based on the total monthly volume that added liquidity executed by the Market Maker solely in SPY options on MIAX PEARL, not including

Excluded Contracts, (as the numerator) expressed as a percentage of (divided by) SPY TCV¹³ (as the denominator). The Exchange notes that Market Makers that achieve the standard Tier 3 volume percentage but do not qualify for the proposed alternative Volume Criteria in that Tier, will receive the Tier 3 rates in the Market Maker Origin table in Penny Classes and Non-Penny Classes. Members will receive the highest tier based on the thresholds achieved. Other Penny classes and Non-Penny classes will receive the Tier 3 rates in the Market Maker Origin table. The Exchange proposes to designate the Tier 3 alternative Volume Criteria with the new symbol “◆” in Tier 3 of the Market Maker Origin table in Section 1)a) of the Fee Schedule, with an explanatory paragraph listed below the tables in Section 1)a) of the Fee Schedule.

The purpose of this proposed change is for business and competitive reasons. The Exchange cannot predict with certainty how many Market Makers would achieve the proposed Tier 3 alternative Volume Criteria, but anticipates that approximately three Market Makers are within reasonable proximity to potentially achieve the higher rebates in SPY/QQQ/IWM options based upon the total monthly volume executed in SPY options on MIAX PEARL by the current MIAX PEARL Market Makers.

The proposed changes are scheduled to become operative January 4, 2021.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act¹⁴ in general, and furthers the objectives of Section 6(b)(4) of the Act,¹⁵ in

¹³ “SPY TCV” means total consolidated volume in SPY calculated as the total national volume in SPY for the month for which the fees apply, excluding consolidated volume executed during the period of time in which the Exchange experiences an Exchange System Disruption (solely in SPY options). See the Definitions Section of the Fee Schedule.

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(4).

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,¹⁶ 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.

The Exchange believes its proposal to modify the volume threshold for the alternative Volume Criteria in Tier 2 and add a new, alternative Volume Criteria to Tier 3 provides for the equitable allocation of reasonable dues and fees and is not unfairly discriminatory for the following reasons. The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, 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.”¹⁷ There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than approximately 15% of the market share of executed volume of multiply-listed equity and ETF options trades as of December 24, 2020, for the month of December 2020.¹⁸

¹⁶ 15 U.S.C. 78f(b)(1) and (b)(5).

¹⁷ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

¹⁸ See https://www.cboe.com/us/options/market_share/.

Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, as of December 30, 2020, the Exchange had an approximately 3.10% market share of executed volume of multiply-listed equity and ETF options for the month of December 2020.¹⁹

The Exchange believes that the ever-shifting market shares among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, in response to transaction and/or non-transaction fee changes. For example, on February 28, 2019, the Exchange filed with the Commission a proposal to increase Taker fees in certain Tiers for options transactions in certain Penny classes for Priority Customers and decrease Maker rebates in certain Tiers for options transactions in Penny classes for Priority Customers (which fee was to be effective March 1, 2019).²⁰ The Exchange experienced a decrease in total market share between the months of February and March of 2019, after the fees were in effect. Accordingly, the Exchange believes that the March 1, 2019 fee change may have contributed to the decrease in the Exchange's market share and, as such, the Exchange believes competitive forces constrain options exchange transaction fees and market participants can shift order flow based on fee changes instituted by the exchanges.

The Exchange believes its proposal to modify the volume threshold for the alternative Volume Criteria in Tier 2 and add a new, alternative Volume Criteria to Tier 3 is reasonable, equitably allocated and not unfairly discriminatory because these changes are for business and competitive reasons. In order to attract order flow, the Exchange initially set its volume threshold for the alternative Volume Criteria in Tier 2 at a meaningful low level. The Exchange

¹⁹ See id.

²⁰ See Securities Exchange Act Release No. 85304 (March 13, 2019), 84 FR 10144 (March 19, 2019) (SR-PEARL-2019-07).

now believes that it is appropriate to adjust this volume threshold so that it is more in line with the volume threshold that Market Makers currently achieve in SPY/QQQ/IWM options on MIAX PEARL. The Exchange believes that the proposed volume threshold will still remain highly competitive such that the threshold should enable the Exchange to continue to attract order flow in SPY/QQQ/IWM options and maintain market share.

The Exchange believes its proposal to establish the alternative Volume Criteria for Tier 3 is reasonable, equitable, and not unfairly discriminatory, as it is a form of pricing already adopted by the Exchange²¹ and a form of pricing based upon trading activity in a select group of symbols, which is a common practice on many U.S. options exchanges as a means to incentivize order flow to be sent to an exchange for execution in actively traded options classes. The Exchange's affiliate, Miami International Securities Exchange, LLC ("MIAX Options"), offers differentiated pricing for transactions in options underlying certain select symbols.²² Other options exchanges' fee schedules distinguish by symbol and specifically assess different fees and rebates for transactions in select symbols for the same market participants.²³

The Exchange believes its proposal to offer an alternative Tier 3 Volume Criteria based upon the total monthly volume executed in SPY options on MIAX PEARL by a MIAX PEARL Market Maker when adding liquidity, will incentivize Market Makers to improve their posted

²¹ See supra note 11. See generally, Section 1)a) of the Fee Schedule for Market Maker Origin.

²² See MIAX Options Fee Schedule, Section 1)a)iii).

²³ See Nasdaq ISE, LLC ("ISE") Fee Schedule, Section 3, Regular Order Fees and Rebates. The ISE Fee Schedule provides for a "Market Maker Plus" program for Select and Non-Select Symbols, with tiered incentives for Market Makers. Further, the ISE Fee Schedule provides for a linked maker rebate for SPY, QQQ and IWM, in which the linked maker rebate applies to executions in SPY, QQQ, and IWM if the ISE Market Maker does not achieve the applicable tier in that symbol but achieves the tier (i.e., any of the Market Maker Plus Tiers 2-4) for any badge/suffix combination in the other linked symbol, in which case the higher tier achieved applies to both symbols.

liquidity to the benefit of the entire market, which will increase order flow sent to the Exchange, benefiting all market participants through increased liquidity, tighter markets and order interaction.

The Exchange also believes that its proposal is not unfairly discriminatory as all Market Makers can qualify for the alternative Volume Criteria in Tiers 2 and 3 by meeting the requirements that are designed to incentivize Market Makers to maintain quality markets. In addition, the Exchange continues to believe that it is not unfairly discriminatory to offer rebates pursuant to this proposal to only Market Makers because Market Makers add value through continuous quoting and are subject to additional requirements and obligations (such as quoting obligations) that other market participants are not.

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

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

The Exchange believes its proposal will not impose any burden on intra-market competition because the Exchange believes that its proposal will not place any category of Exchange market participant at a competitive disadvantage. The proposal to modify the volume threshold for the alternative Volume Criteria in Tier 2 and add a new, alternative Volume Criteria to Tier 3, is intended to improve market quality. The Exchange believes that its proposal will encourage Market Makers to improve market quality by providing an additional incentive to Market Makers in SPY and QQQ/IWM options to send additional SPY and QQQ/IWM orders, which results in narrower bid-ask spreads and increased depth of liquidity. This in turn will attract additional order flow to the Exchange. Accordingly, the Exchange believes that the proposed changes will continue to attract order flow to the Exchange, thereby encouraging additional volume and liquidity to the benefit of all market participants.

The Exchange believes its proposal will not impose any burden on inter-market competition because the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other options exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. The Exchange believes that the proposed rule changes reflect this competitive environment because they modify the Exchange's fees in a manner that encourages market participants to continue to provide liquidity and to send order flow to the Exchange.

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

²⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

²⁵ 17 CFR 240.19b-4(f)(2).

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](mailto:to-rule-comments@sec.gov). Please include File Number SR-PEARL-2020-38 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-2020-38. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the

principal office of the Exchange. All comments received will be posted without change.

Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-PEARL-2020-38 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).