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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-92209; File No. SR-PEARL-2021-27]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the MIAX Pearl Options Fee Schedule to Adopt Fees for a New Data Product Known as the Liquidity Taker Event Report

June 17, 2021.

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 June 7, 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 MIAX Pearl Fee Schedule (the "Fee Schedule") to adopt fees for a new data product to be known as the Liquidity Taker Event Report.[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.

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 See, generally, Exchange Rule 531(a).

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 Exchange recently adopted a new data product known as the Liquidity Taker Event Report (the "Report"), which will be available for purchase to Exchange Members[4] on a voluntary basis. The Exchange now proposes to adopt fees for the Report. The Report was recently approved by the Securities and Exchange Commission ("Commission") and is described under Exchange Rule 531(a).[5] The Report is an optional product available to Members.

By way of background, the Report is a daily report that provides a Member ("Recipient Member") with its liquidity response time details for executions of an order resting on the Book,[6] where that Recipient Member attempted to execute against such resting order[7] within a certain timeframe. It is important to note that the content of the Report is specific to the Recipient Member and the Report will not include any information related to any Member other than the

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4 "Member" means an individual or organization that is registered with the Exchange pursuant to Chapter II of 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 See Securities Exchange Act Release No. 92082 (June 1, 2021) (SR-PEARL-2021-25).

6 The term "Book" means the electronic book of buy and sell orders and quotes maintained by the System. See Exchange Rule 100. The term "System" means the automated trading system used by the Exchange for the trading of securities. See id.

7 Only displayed orders will be included in the Report. The Exchange notes that it does not currently offer any non-displayed orders types on its options trading platform.

Recipient Member.

The following information is included in the Report regarding the resting order: (A) the time the resting order was received by the Exchange; (B) symbol; (C) order reference number, which is a unique reference number assigned to a new order at the time of receipt; (D) whether the Recipient Member is an Affiliate[8] of the Member that entered the resting order[9]; (E) origin type (e.g., Priority Customer,[10] Market Maker[11]); (F) side (buy or sell); and (G) displayed price and size of the resting order.[12]

The following information is included in the Report regarding the execution of the resting

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8 The term "affiliate" of or person "affiliated with" another person means a person who, directly, or indirectly, controls, is controlled by, or is under common control with, such other person. See Exchange Rule 100.

9 The Report will simply indicate whether the Recipient Member is Affiliate of the Member that entered the resting order and not include any other information that may indicate the identity of the Member that entered the resting order.

10 The term "Priority Customer" means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). The number of orders shall be counted in accordance with Interpretation and Policy .01 to Exchange Rule 100. See Exchange Rule 100.

11 The term "Market Makers" refers to "Lead Market Makers", "Primary Lead Market Makers" and "Registered Market Makers" collectively. See Exchange Rule 100.

12 This information is also included in the Missed Opportunity – Latency Report, which is a similar report for equity securities that is offered by the NASDAQ Stock Market, LLC (the "NASDAQ Report"). See NASDAQ Equity Section 7, Rule 146(a)(2). The Exchange notes that the displayed price and size are also disseminated via the Exchange's proprietary data feeds and the Options Price Reporting Authority ("OPRA"). The Exchange also notes that the displayed price of the resting order may be different than the ultimate execution price. This may occur when a resting order is displayed and ranked at different prices upon entry to avoid a locked or crossed market.

order: (A) the PBBO[13] at the time of execution;[14] (B) the ABBO[15] at the time of execution;[16] (C) the time first response that executes against the resting order was received by the Exchange and the size of the execution and type of the response;[17] (D) the time difference between the time the resting order was received by the Exchange and the time the first response that executes against the resting order was received by the Exchange;[18] and (E) whether the response was entered by the Recipient Member. If the resting order executes against multiple contra-side responses, only the PBBO and ABBO at the time of the execution against the first response will be included.

The following information is included in the Report regarding response(s) sent by the Recipient Member: (A) Recipient Member identifier; (B) the time difference between the time the first response that executes against the resting order was received by the Exchange and the time of each response sent by the Recipient Member, regardless of whether it executed or not;[19] (C) size and type of each response submitted by Recipient Member; and (D) response reference number, which is a unique reference number attached to the response by the Recipient Member.

The Report includes the data set for executions and contra-side responses that occurred

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13 The term "PBBO" means the best bid or offer on the Pearl Exchange. See Exchange Rule 100.

14 Exchange Rule 531(a)(1)(ii)(B) provides that if the resting order executes against multiple contra-side responses, only the PBBO at the time of the execution against the first response will be included.

15 The term "ABBO" or "Away Best Bid or Offer" 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 Exchange Rule 100.

16 Exchange Rule 531(a)(1)(ii)(A) further provides that if the resting order executes against multiple contra-side responses, only the ABBO at the time of the execution against the first response will be included.

17 The time the Exchange received the response order would be in nanoseconds and would be the time the response was received by the Exchange's network, which is before the time the response would be received by the System.

18 The time difference would be provided in nanoseconds.

19 For purposes of calculating this duration of time, the Exchange will use the time the resting order and the Recipient Member's response(s) is received by the Exchange's network, both of which would be before the order and response(s) would be received by the System. This time difference would be provided in nanoseconds.

within 200 microseconds of the time the resting order was received by the Exchange. The Report contains historical data from the prior trading day and will be available after the end of the trading day, generally on a T+1 basis. The Report does not include real-time data.

The Exchange believes the additional data points from the matching engine outlined above may help Members gain a better understanding about their own interactions with the Exchange. The Exchange believes the Report will provide Members with an opportunity to learn more about better opportunities to access liquidity and receive better execution rates. The Report will increase transparency and democratize information so that all firms that subscribe to the Report have access to the same information on an equal basis, even for firms that do not have the appropriate resources to generate a similar report regarding interactions with the Exchange.

Members generally would use a liquidity accessing order if there is a high probability that it will execute against an order resting on the Exchange's Book. The Report identifies by how much time an order that may have been marketable missed an execution. The Report will provide greater visibility into the missed trading execution, which will allow Members to optimize their models and trading patterns to yield better execution results.

The Report will be a Member-specific report and will help Members to better understand by how much time a particular order missed executing against a specific resting order, thus allowing that Member to determine whether it wants to invest in the necessary resources and technology to mitigate missed executions against certain resting orders on the Exchange's Book.

The Exchange proposes to provide the Report in response to Member demand for data concerning the timeliness of their incoming orders and executions against resting orders. Members have periodically requested from the Exchange's trading operations personnel information concerning the timeliness of their incoming orders and efficacy of their attempts to execute against resting liquidity on the Exchange's Book. The purpose of the Report is to provide Members the necessary data in a standardized format on a T+1 basis to those that subscribe to the Report on an equal basis.

The product is offered to Members on a completely voluntary basis in that the Exchange is not required by any rule or regulation to make this data available and potential subscribers may purchase the Report only if they voluntarily choose to do so. It is a business decision of each Member whether to subscribe to the Report or not.

The Exchange proposes to adopt new Section 7), Reports, in its Fee Schedule, which will provide that Members may purchase the Report on a monthly or annual (12-month) basis. The Exchange proposes to assess a monthly fee of $4,000 per month and a fee of $24,000 per year for a 12-month subscription for the Report. Members may cancel their subscription at any time. The Exchange also proposes to specify that for mid-month subscriptions, new subscribers will be charged for the full calendar month for which they subscribe and will be provided Report data for each trading day of the calendar month prior to the day on which they subscribed.

The Exchange intends to begin to offer the Report and charge the proposed fees on June 7, 2021.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[20] in general, and furthers the objectives of Section 6(b)(5) of the Act,[21] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest, and that it is not designed to permit unfair discrimination among customers, brokers, or dealers. The Exchange also believes that its proposal to adopt fees for the Report is consistent with Section 6(b) of the Act[22] in general, and furthers the objectives of Section 6(b)(4) of the Act[23] in

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20 15 U.S.C. 78f(b).

21 15 U.S.C. 78f(b)(5).

22 15 U.S.C. 78f(b).

23 15 U.S.C. 78f(b)(4).

particular, in that it is an equitable allocation of dues, fees and other charges among its Members and other recipients of Exchange data.

In adopting Regulation NMS, the Commission granted self-regulatory organizations ("SROs") and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. The Exchange believes that the Report further broadens the availability of U.S. option market data to investors consistent with the principles of Regulation NMS. The Report also promotes increased transparency through the dissemination of the Report. Particularly, the Report will benefit investors by facilitating their prompt access to the value added information that is included in the Report. The Report will allow Members to access information regarding their trading activity that they may utilize to evaluate their own trading behavior and order interactions.

The Exchange operates in a highly competitive environment. Indeed, there are currently 16 registered options exchanges that trade options. Based on publicly available information, no single options exchange has more than 15% of the market share and currently the Exchange represents only approximately 5.29% of the market share.[24] The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Particularly, 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."[25] Making similar data products available to market participants fosters competition in the marketplace, and constrains the ability of exchanges to charge supra-

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24 See Cboe Global Markets U.S. Options Market Month-to-Date Volume Summary (June 1, 2021), available at https://markets.cboe.com/us/options/market_statistics/.

25 See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) ("Regulation NMS Adopting Release").

competitive fees. In the event that a market participant views one exchange's data product as more attractive than the competition, that market participant can, and often does, switch between similar products. The proposed fees are a result of the competitive environment of the U.S. options industry as the Exchange seeks to adopt fees to attract purchasers of the recently introduced Report.

The Exchange believes the proposed fees are reasonable as the proposed fees are both modest and similar to fees assessed by other exchanges that provide similar data products.[26] Indeed, if the Exchange proposed fees that market participants viewed as excessively high, then the proposed fees would simply serve to reduce demand for the Exchange's data product, which as noted, is entirely optional. Other options exchanges are also free to introduce their own comparable data products with lower prices to better compete with the Exchange's offering. As such, the Exchange believes that the proposed fees are reasonable and set at a level to compete with other options exchanges that may choose to offer similar reports. Moreover, if a market participant views another exchange's potential report as more attractive, then such market participant can merely choose not to purchase the Exchange's Report and instead purchase another exchange's similar data product, which may offer similar data points, albeit based on that other market's trading activity.

The Exchange also believes providing an annual subscription for an overall lower fee than a monthly subscription is equitable and reasonable because it would enable the Exchange to gauge long-term interest in the Report. A lower annual subscription fee would also incentivize

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26 The NASDAQ Stock Market LLC ("NASDAQ") charges fees ranging from $1,500 to $3,500 per month for a similar report for equity securities called the Missed Opportunity – Latency report as part of its NASDAQ Trader Insights offering. See NASDAQ Equity Section 7, Rule 146(a)(2). See also the CME Group, Inc.'s Time and Sale report. https://www.cmegroup.com/trading/about-time-sales.html#:~:text=CME%20Globex%20Options)-,CME%20Group's%20Time%20%26%20Sales%20report%20provides%20the%20price%20and%20time,calendar%20date)%20of%20the%20transaction.&text=A%20zero%20volume%20represents%20an%20indicative%20price.,-The%20Indicator%20column.

Members to subscribe to the Report on a long-term basis, thereby improving the efficiency by which the Exchange may deliver the Report by doing so on a regular basis over a prolonged and set period of time. The Exchange notes that other exchanges provide annual subscriptions for reports concerning their data product offerings.[27]

The Exchange also believes the proposed fees are reasonable as they would support the introduction of a new market data product to Members that are interested in gaining insight into latency in connection with orders that failed to execute against an order resting on the Exchange's Book. The Report accomplishes this by providing those Members data to analyze by how much time their order may have missed an execution against a contra-side order resting on the Book. Members may use this data to optimize their models and trading patterns in an effort to yield better execution results by calculating by how much time their order may have missed an execution.

Selling market data, such as the Report, is also a means by which exchanges compete to attract business. To the extent that the Exchange is successful in attracting subscribers for the Report, it may earn trading revenues and further enhance the value of its data products. If the market deems the proposed fees to be unfair or inequitable, firms can diminish or discontinue their use of the data and/or avail themselves of similar products offered by other exchanges.[28] The Exchange therefore believes that the proposed fees for the Report reflect the competitive environment and would be properly assessed on Member users. The Exchange also believes the proposed fees are equitable and not unfairly discriminatory as the fees would apply equally to all users who choose to purchase such data. It is a business decision of each Member that chooses to purchase the Report. The Exchange's proposed fees would not differentiate between

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27 Cboe Exchange, Inc. ("Cboe") assesses a $24,000 annual fee for an intra-day subscription to Open-Close Data. See https://datashop.cboe.com/options-summary-subscription.

28 See supra note 26.

subscribers that purchase the Report and are set at a modest level that would allow any interested Member to purchase such data based on their business needs.

The Exchange reiterates that the decision as to whether or not to purchase the Report is entirely optional for all potential subscribers. Indeed, no market participant is required to purchase the Report, and the Exchange is not required to make the Report available to all investors. It is entirely a business decision of each Member to subscribe to the Report. The Exchange offers the Report as a convenience to Members to provide them with additional information regarding trading activity on the Exchange on a delayed basis after the close of regular trading hours. A Member that chooses to subscribe to the Report may discontinue receiving the Report at any time if that Member determines that the information contained in the Report is no longer useful.

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange made the Report available in order to keep pace with changes in the industry and evolving customer needs and demands, and believes the data product will contribute to robust competition among national securities exchanges. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges.

The Exchange also does not believe the proposed fees would cause any unnecessary or inappropriate burden on intermarket competition as other exchanges are free to introduce their own comparable data product with lower prices to better compete with the Exchange's offering. The Exchange operates in a highly competitive environment, and its ability to price the Report is constrained by competition among exchanges who choose to adopt a similar product. The Exchange must consider this in its pricing discipline in order to compete for the market data. For example, proposing fees that are excessively higher than fees for potentially similar data products would simply serve to reduce demand for the Exchange's data product, which as discussed, market participants are under no obligation to utilize. In this competitive environment, potential purchasers are free to choose which, if any, similar product to purchase to satisfy their need for market information. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges.

The Exchange does not believe the proposed rule change would cause any unnecessary or inappropriate burden on intramarket competition. Particularly, the proposed product and fees apply uniformly to any purchaser in that the Exchange does not differentiate between subscribers that purchase the Report. The proposed fees are set at a modest level that would allow any interested Member to purchase such data based on their business needs.

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,[29] and Rule 19b-4(f)(2)[30] 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:

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29 15 U.S.C. 78s(b)(3)(A)(ii).

30 17 CFR 240.19b-4(f)(2).

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-2021-27 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-2021-27. 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-2021-27 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.[31]

J. Matthew DeLesDernier,

Assistant Secretary.

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31 17 CFR 200.30-3(a)(12).