



SECURITIES AND EXCHANGE COMMISSION
[Release No. 34-93506; File No. SR-PEARL-2021-35]

**Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing of Amendment No. 1
and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by
Amendment No. 1, to Amend Exchange Rule 2616, Priority of Orders**

November 2, 2021.

I. Introduction

On July 20, 2021, MIAX PEARL, LLC (“MIAX Pearl” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Exchange Rule (“Rule”) 2616, Priority of Orders, to provide that an order receive a new timestamp when its position is modified via a Cancel/Replace message during a short sale period. The proposed rule change was published for comment in the Federal Register on August 6, 2021.³ On September 16, 2021, pursuant to Section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁵ On September 28, 2021, the Exchange filed Amendment No. 1 to the proposed rule change.⁶ The Commission has received no comments on the proposed rule change. This

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 92545 (August 2, 2021), 86 FR 43279 (August 6, 2021) (“Notice”).

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 93024 (September 16, 2021), 86 FR 52704 (September 22, 2021). The Commission designated November 4, 2021, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

⁶ In Amendment No. 1, the Exchange amended the proposal to: (1) provide additional explanation and rationale for the proposed rule change; (2) describe how the proposed rule change should have minimal impact based on past trading activity on the Exchange; (3) enhance statements concerning each equity member’s obligations to comply with Regulation SHO (17 CFR 242.200 et seq.); and (4) correct minor typographical errors.

order provides notice of the filing of Amendment No. 1 to the proposed rule change, and grants approval to the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of the Proposed Rule Change, as Modified by Amendment No. 1

Rule 2616(a)(5) currently provides that, in the event an order has been cancelled or replaced in accordance with Rule 2614(e), such order only retains its timestamp if such modification involves a decrease in the size of the order, a change to the Max Floor of an order with a Reserve Quantity, or a change in position from (A) sell to sell short; (B) sell to sell short exempt; (C) sell short to sell; (D) sell short to sell short exempt; (E) sell short exempt to sell; and (F) sell short exempt to sell short.⁷ Under the current rule, any other modification to an order, including an increase in the size of the order and/or price change, results in such order losing time priority as compared to other orders in the MIAX Pearl Equities Book and the timestamp for such order being revised to reflect the time of the modification.⁸

The Exchange has proposed to amend Rule 2616(a)(5) such that an order resting on the MIAX Pearl Equities trading platform that is modified via a Cancel/Replace message,⁹ in accordance with Rule 2614(e), to change its position in one of the ways enumerated in Rule 2616(a)(5) would retain its timestamp only if the position change occurs when a short sale period is not in effect (and there is no additional modification to the order that would trigger a new timestamp, such as an increase in size or price change).¹⁰ As a result, unlike under the current rule, under proposed Rule 2616(a)(5) an order that is modified via a Cancel/Replace message, in accordance with Rule 2614(e), to change its position as enumerated in Rule 2616(a)(5) would

Amendment No. 1 is available on the Commission's website at <https://www.sec.gov/comments/sr-pearl-2021-35/srpearl202135-9304453-259866.pdf>.

⁷ See Rule 2616(a)(5); Notice at 43280.

⁸ See Rule 2616(a)(5); Notice at 43280.

⁹ As discussed below, the Exchange proposes to replace the phrase "cancelled or replaced" in Rule 2616(a)(5) with the phrase "modified via a Cancel/Replace message."

¹⁰ See proposed Rule 2616(a)(5); Notice at 43280. See also Rule 2614(g)(3)(A) (stating that a short sale period is the time when "a short sale price test restriction under Rule 201 of Regulation SHO" is in effect); 17 CFR 242.201.

receive a new timestamp when the position change occurs during a short sale period, even if, for example, the order's price remains unchanged.¹¹ Such modification to an order during a short sale period would result in the order losing time priority compared to other orders in the MIAX Pearl Equities Book and the timestamp for such order being revised to reflect the time of the modification.¹²

The Exchange states that this proposed rule change stems from changes to the underlying technology for its re-pricing processes for the displayed and non-displayed portions of an order with a Reserve Quantity,¹³ which, in turn, impacted how its system determines whether a short sale order must be re-priced to comply with Regulation SHO.¹⁴ The Exchange further states that, due to these technology changes and the interaction and technological complexity of its system's order re-pricing processes, this proposal would entail adjusting the Exchange's re-pricing process to re-evaluate an order for execution when the order's position is modified, via a Cancel/Replace message, during a short sale period and there is no corresponding change to the order's price.¹⁵ This, according to the Exchange, would result in the order receiving a new timestamp, including where the order's price remains unchanged.¹⁶ According to the Exchange, it has proposed this rule change in an abundance of caution to reinforce the reliability, resiliency, and continued operation of its system and underlying technology.¹⁷

In addition, the Exchange states that the proposed rule change is designed to address a discrete and potentially limited scenario, and states, by way of example, that between July 1,

¹¹ See proposed Rule 2616(a)(5); Notice at 43280.

¹² See proposed Rule 2616(a)(5); Notice at 43280.

¹³ See Amendment No. 1, at 3.

¹⁴ See id. at 3-4. See also 17 CFR 242.201; Rule 2614(g)(3)(C) (setting forth the Exchange's short sale price sliding process).

¹⁵ See Amendment No. 1, at 4-5. The Exchange states that, currently, an order is not re-evaluated for execution when its position is modified unless the order receives a new price. See id. at 5 n.7.

¹⁶ Id. at 4-5.

¹⁷ Id.

2021 and September 7, 2021, there were no position modifications via a Cancel/Replace message that would have resulted in a new timestamp and loss in priority based on the proposed functionality, had it been in effect.¹⁸ Further, the Exchange states that a change in an order's price or position as well as an increase in an order's size via a Cancel/Replace message implicitly result in a new order, and all Exchange equity members therefore must ensure continued compliance with the order marking and locate requirements of Regulation SHO, including compliance with Question 2.6 of the Commission's "Responses to Frequently Asked Questions Concerning Regulation SHO."¹⁹

The Exchange also has proposed to replace the phrase "cancelled or replaced" in Rule 2616(a)(5) with the phrase "modified via a Cancel/Replace message," so as to clarify within Rule 2616(a)(5) that the order is being modified, rather than cancelled and replaced with a new order.²⁰ Relatedly, the Exchange has proposed a conforming change to Rule 2614(e)(3) to add the word "Cancel" before the word "Replace" to make its rulebook terminology consistent in referring to a "Cancel/Replace message."²¹ The Exchange states that these proposed changes do not amend the meaning or operation of either rule.²²

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.²³ In particular, the Commission finds

¹⁸ Id. at 5-6.

¹⁹ Id. at 7. See also 17 CFR 242.201; Responses to Frequently Asked Questions Concerning Regulation SHO, available at: <https://www.sec.gov/divisions/marketreg/mrfaqregsho1204.htm>.

²⁰ See proposed Rule 2616(a)(5); see also Notice at 43280.

²¹ See proposed Rule 2614(e)(3); see also Notice at 43280.

²² See Notice at 43280.

²³ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

that the proposal is consistent with Section 6(b)(5) of the Act,²⁴ which requires, among other things, that the rules of a national securities exchange be 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, in general, to protect investors and the public interest, and that those rules not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As discussed above, the Exchange has proposed to amend Rule 2616(a)(5) such that an order resting on the MIAX Pearl Equities trading platform would receive a new timestamp when the order's position is modified via a Cancel/Replace message during a short sale period regardless of whether there is a corresponding change to the order's price. The Commission believes that this proposal should facilitate the Exchange's ability to fulfill its regulatory obligations, particularly with regard to the operation and resilience of its system and compliance with Regulation SHO. Moreover, the Exchange has represented, and assessed historical practices on the Exchange to verify, that it likely would be an uncommon occurrence for an order to lose time priority as a result of the change in functionality proposed herein. Thus, the proposed rule change appears to be designed to implicate a discrete and limited order book scenario. Further, the Commission believes that the proposed functionality, in addition to likely being implicated infrequently, will be fully transparent to market participants. Lastly, the Commission believes that the proposed change to Rule 2616(a)(5) to replace the phrase "cancelled or replaced" with the phrase "modified via a Cancel/Replace message" and the proposed conforming change to Rule 2614(e)(3) should enhance the clarity and consistency of the terminology used in the Exchange's rules, which should help mitigate the potential for market participant confusion.

²⁴ 15 U.S.C. 78f(b)(5).

For the reasons discussed above, the Commission finds that this proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act because it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest, and is not designed to permit unfair discrimination.

IV. Solicitation of Comments on Amendment No. 1

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 1 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 No. SR-PEARL-2021-35 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 No. SR-PEARL-2021-35. The file numbers 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 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 publicly available. All submissions should refer to File No. SR-PEARL-2021-35 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the thirtieth day after the date of publication of notice of the amended proposal in the Federal Register. In Amendment No. 1, the Exchange amended the proposal to: (1) provide additional explanation and rationale for the proposed rule change; (2) describe how the proposed rule change should have minimal impact based on past trading activity on the Exchange; (3) enhance statements concerning each equity member's obligations to comply with Regulation SHO; and (4) correct minor typographical errors. Amendment No. 1 adds clarity and justification to the proposal, and does not alter the proposed change in system functionality from what is set forth in the Notice, which was subject to a full comment period. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,²⁵ to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

²⁵ 15 U.S.C. 78s(b)(2).

VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²⁶ that the proposed rule change (SR-PEARL-2021-35), as modified by Amendment No. 1, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁷

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2021-24325 Filed: 11/5/2021 8:45 am; Publication Date: 11/8/2021]

²⁶ Id.

²⁷ 17 CFR 200.30-3(a)(12).