



SECURITIES AND EXCHANGE COMMISSION
[Release No. 34-96836; File No. SR-PEARL-2023-02]

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

February 8, 2023.

Pursuant to the provisions of 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 January 31, 2023, 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 Options Fee Schedule (the “Fee Schedule”).

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 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 modify the volume threshold for the alternative volume criteria (described below) in Tier 2 (defined below).

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 contract

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 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 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

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

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 following process. A MIAX PEARL Market Maker appoints an EEM and an EEM appoints a MIAX PEARL Market Maker, for the purposes of the Fee Schedule, by each completing and sending an executed Volume Aggregation Request Form by email to membership@miaxoptions.com no later than 2 business days prior to the first business day of the month in which the designation is to become effective. Transmittal of a validly completed and executed form to the Exchange along with the Exchange’s acknowledgement of the effective designation to each of the Market Maker and EEM will be viewed as acceptance of the appointment. The Exchange will only recognize one designation per Member. A Member may make a designation not more than once every 12 months (from the date of its most recent designation), which designation shall remain in effect unless or until the Exchange receives written notice submitted 2 business days prior to the first business day of the month from either Member indicating that the appointment has been terminated. Designations will become operative on the first business day of the effective month and may not be terminated prior to the end of the month. Execution data and reports will be provided to both parties. 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.

contract transaction rebates and fees are waived for all market 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 Market Maker origin 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 the Exchange, 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 0.75% 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 0.75% 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 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

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

¹¹ See Fee Schedule, Section 1)a), explanatory paragraph below the tables and footnotes. See also Securities Exchange Act Release Nos. 84592 (November 14, 2018), 83 FR 58646 (November 20, 2018) (SR-PEARL-2018-23); 90906 (January 21, 2021), 86 FR 5296 (January 19, 2021) (SR-PEARL-2020-38).

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 now proposes to modify the threshold for the alternative volume criteria in Tier 2 from 0.75% to 0.55% 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 0.55% 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.

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.¹³ In 2021, the Exchange then increased the volume

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.

¹³ See Securities Exchange Act Release No. 84592 (November 14, 2018), 83 FR 58646 (November 20, 2018) (SR-PEARL-2018-23).

threshold for the alternative volume criteria in Tier 2.¹⁴ 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 by reducing the volume threshold for the alternative volume criteria in Tier 2 from 0.75% to 0.55% in SPY/QQQ/IWM options. Further, the Exchange believes that with the proposed change, the Exchange will attract additional SPY/QQQ/IWM option order flow from Market Makers, which should benefit all Exchange participants by providing more trading opportunities and tighter spreads. The Exchange cannot predict with certainty how many Market Makers will achieve the alternative volume criteria in Tier 2 with the decreased threshold percentage.

Implementation

The proposed change will be effective beginning February 1, 2023.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with section 6(b) of the Act¹⁵ in general, and furthers the objectives of section 6(b)(4) of the Act,¹⁶ in 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,¹⁷ 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.

¹⁴ See Securities Exchange Act Release No. 90906 (January 21, 2021), 86 FR 5296 (January 19, 2021) (SR-PEARL-2020-38).

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(4).

¹⁷ 15 U.S.C. 78f(b)(1) and (b)(5).

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.”¹⁸

There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, as of January 26, 2023, no single exchange has more than approximately 12-13% equity options market share for the month of January 2023.¹⁹ Therefore, no exchange possesses significant pricing power. More specifically, as of January 26, 2023, the Exchange had a market share of approximately 6.71% of executed volume of multiply-listed equity options for the month of January 2023.²⁰

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can discontinue or reduce use of certain categories of products and services, terminate an existing membership or determine to not become a new member, and/or shift order flow, in response to 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).²¹ The Exchange experienced a decrease in total market share for the month of March 2019, after the proposal went into effect. Accordingly, the

¹⁸ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

¹⁹ See “The market at a glance,” (last visited January 26, 2023), [available at https://www.miaxoptions.com/](https://www.miaxoptions.com/).

²⁰ See *id.*

²¹ See Securities Exchange Act Release No. 85304 (March 13, 2019), 84 FR 10144 (March 19, 2019) (SR-PEARL-2019-07).

Exchange believes that its March 1, 2019, fee change, to increase certain transaction fees and decrease certain transaction rebates, may have contributed to the decrease in MIAX Pearl's market share and, as such, the Exchange believes competitive forces constrain the Exchange's, and other options exchanges, ability to set transaction fees and market participants can shift order flow based on fee changes instituted by the exchanges.

The Exchange believes its proposal to decrease the threshold for the alternative volume criteria in Tier 2 from 0.75% to 0.55% of total consolidated national monthly volume in SPY/QQQ/IWM options is reasonable, equitably allocated and not unfairly discriminatory because the reduced threshold percentage should attract additional SPY/QQQ/IWM option order flow from Market Makers, which will benefit all Exchange participants by providing more trading opportunities and tighter spreads.

The Exchange believes its proposal is reasonable, equitable and not unfairly discriminatory because all similarly situated market participants in the same origin type (MIAX Pearl Market Makers) are subject to the same tiered Maker rebates and access to the Exchange is offered on terms that are not unfairly discriminatory. The Exchange believes its proposal will incentivize Market Makers to increase their posted liquidity in SPY/QQQ/IWM options 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.

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 that the proposed change should continue to encourage the provision of liquidity in SPY/QQQ/IWM options that enhances the quality of the Exchange's market and increases the number of trading opportunities on the Exchange for all participants who will be able to compete for such opportunities. The proposed rule changes should enable the Exchange to continue to attract and compete for order flow with other exchanges. However, this

competition does not create an undue burden on competition but rather offers all market participants the opportunity to receive the benefit of competitive pricing.

The proposed change to the threshold criteria for the alternative volume criteria in Tier 2 for the Market Maker origin is intended to keep the Exchange's rebates highly competitive with those of other exchanges, and to encourage liquidity and should enable the Exchange to continue to attract and compete for order flow with other exchanges. 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. In such an environment, the Exchange must continually adjust its rebates and fees to remain competitive with other exchanges and to attract order flow. The Exchange believes that the proposed rule changes reflect this competitive environment because the proposal modifies 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,²² and Rule 19b-4(f)(2)²³ 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.

²² 15 U.S.C. 78s(b)(3)(A)(ii).

²³ 17 CFR 240.19b-4(f)(2).

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. Please include File Number SR-PEARL-2023-02 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-2023-02. 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 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-2023-02 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.²⁴

Sherry R. Haywood,

Assistant Secretary.

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²⁴ 17 CFR 200.30-3(a)(12).