

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

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[FR Doc. 2017-12585 Filed 6-16-17; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-80914; File No. SR-PEARL-2017-30]

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

June 13, 2017.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) <sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 7, 2017, 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”).

The Exchange initially filed the proposal on May 31, 2017 (SR-PEARL-2017-27). That filing was withdrawn and replaced with the current filing (SR-PEARL-2017-30).

The text of the proposed rule change is available on the Exchange’s Web site 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.

#### 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 to decrease the “Taker” fee in all Tiers assessable to all orders submitted by a Member for the account of a Priority Customer <sup>3</sup> in SPY options.

The Exchange currently assesses tiered transaction rebates and fees to all market participants which are based upon the total monthly volume executed by the Member <sup>4</sup> on MIAX PEARL in the relevant, respective origin type (not including Excluded Contracts) <sup>5</sup> expressed as a percentage of TCV. <sup>6</sup> In addition, the per contract

<sup>3</sup> “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). See Exchange Rule 100, including Interpretations and Policies .01.

<sup>4</sup> “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.

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

<sup>6</sup> “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 of 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

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.<sup>7</sup> Members that place resting liquidity, *i.e.*, orders resting on the book of the MIAX PEARL System,<sup>8</sup> 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 ABBO uncrossing transactions, per 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 Pilot Program <sup>9</sup> (“Penny classes”) than for order executions in standard option classes which are not in the Penny Pilot Program (“Non-Penny classes”), where Members are assessed higher transaction fees and receive higher rebates.

Transaction rebates and fees applicable to orders submitted by a Member for the account of a Priority Customer are assessed according to the following table as of June 1, 2017:

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.

<sup>7</sup> “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.

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

<sup>9</sup> See Securities Exchange Act Release Nos. 79778 (January 12, 2017), 82 FR 6662 (January 19, 2017) (SR-PEARL-2016-01); 80758 (May 24, 2017), 82 FR 25022 (May 31, 2017) (SR-PEARL-2017-24).

<sup>15</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

| Origin                  | Tier | Volume criteria         | Per contract rebates/fees for penny classes |        | Per contract rebates/fees for non-penny classes |        |
|-------------------------|------|-------------------------|---|--------|---|--------|
|                         |      |                         | Maker                                       | Taker  | Maker   | Taker  |
| Priority Customer ..... | 1    | 0.00%–0.05% .....       | (\$0.25)                                    | \$0.38 | (\$0.85)  | \$0.87 |
|                         | 2    | Above 0.05%–0.35% ..... | (0.40)                                      | 0.38   | (1.05)  | 0.86   |
|                         | 3    | Above 0.35%–0.50% ..... | (0.50)                                      | 0.38   | (1.05)  | 0.85   |
|                         | 4    | Above 0.50%–0.75% ..... | (0.53)                                      | 0.38   | (1.05)  | 0.84   |
|                         | 5    | Above 0.75% .....       | (0.54)                                      | 0.38   | (1.05)  | 0.84   |

The Exchange notes that, on May 26, 2017, the Exchange filed a proposed rule change to decrease the Taker fees for Priority Customer orders for options in Penny classes in each Tier to \$0.38.<sup>10</sup> Those changes, which became operative on June 1, 2017, are reflected in the above table.

The Exchange now proposes to decrease the Taker fee in all Tiers assessable to orders submitted by a Member for the account of a Priority Customer<sup>11</sup> solely in SPY options to \$0.35 per contract. Accordingly, the Exchange proposes to add a sentence beneath the Priority Customer table in the Add/Remove Tiered Rebates/Fees (by way of an asterisk to the Taker fee) to state that the Taker fee in the table applies “For all Penny Classes other than SPY. For SPY, the Priority Customer Taker Fee shall be \$0.35 per contract.”

The purpose of decreasing the Taker fee for Priority Customer orders in SPY options is for business and competitive reasons to attract greater Priority Customer SPY order flow to the Exchange, and to match a similar pricing change recently announced by Nasdaq ISE with respect to taker fees for priority customer orders in SPY options on that exchange.<sup>12</sup> The Exchange believes that reducing the Taker fee for Priority Customer orders in SPY options to \$0.35 per contract (regardless of the Tier the Member achieves), will incentivize Members to send greater Priority Customer SPY option order flow to the Exchange due to favorable pricing for this liquidity type.

<sup>10</sup> See SR–PEARL–2017–25, filed May 26, 2017, and posted on the MIAX PEARL Web site: <http://www.miaxoptions.com/rule-filings/pearl>. On June 7, 2017, that filing was withdrawn and replaced with SR–PEARL–2017–29, filed June 7, 2017, and posted on the MIAX PEARL Web site: <http://www.miaxoptions.com/rule-filings/pearl>.

<sup>11</sup> “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). See Exchange Rule 100, including Interpretations and Policies .01.

<sup>12</sup> See SR–ISE–2017–49 (May 31, 2017) <http://www.cchwallstreet.com/contents/pdf/2017/SR-ISE-2017-49.pdf>.

## 2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act<sup>13</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act,<sup>14</sup> in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities, and 6(b)(5) of the Act,<sup>15</sup> 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 proposed Taker fee decrease applicable to orders submitted by a Member for the account of a Priority Customer in SPY options is reasonable, equitable and not unfairly discriminatory because all Priority Customer SPY option orders are subject to the same Taker fees and access to the Exchange is offered on terms that are not unfairly discriminatory. The Exchange initially set its Taker fees at the various volume levels based upon business determinations and an analysis of current Taker fees and volume levels at other exchanges. For competitive and business reasons, the Exchange believes that lower Taker fees assessable to Priority Customer transactions in SPY options in all Tiers will encourage Members to execute more volume in SPY options on behalf of Priority Customers since they will be assessed reduced fees in all Tiers for Priority Customer orders in SPY options which remove liquidity. The Exchange believes for these reasons that offering the reduced Taker fees for Priority Customer transactions in SPY options in all Tiers is equitable, reasonable and not unfairly discriminatory, and thus consistent with the Act.

<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(4).

<sup>15</sup> 15 U.S.C. 78f(b)(1) and (b)(5).

The Exchange believes that its proposal to reduce Taker fees assessable to transactions solely in SPY options and not to reduce Taker fees for other option classes is consistent with other options markets that also assess different transaction fees for SPY options as compared to other option classes. The Exchange believes that establishing different pricing for SPY options for Priority Customers is reasonable, equitable, and not unfairly discriminatory because SPY options are more liquid than other option classes. Additionally, other competing options exchanges differentiate pricing in a similar manner.<sup>16</sup>

Further, the Exchange believes that it is equitable and not unfairly discriminatory to assess lower fees to Priority Customer orders than to non-Priority Customer orders. A Priority Customer is by definition not a broker or dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). This limitation does not apply to participants on the Exchange whose behavior is substantially similar to that of market professionals, including non-Priority Customers, MIAX PEARL Market Makers, Firms, and Broker-Dealers, who will generally submit a higher number of orders (many of which do not result in executions) than Priority Customers.

Furthermore, the proposed decrease to the Taker fees in SPY options for Priority Customer transactions in all Tiers promotes just and equitable principles of trade, fosters cooperation and coordination with persons engaged in facilitating transactions in securities, and protects investors and the public interest because the proposed decrease in the fees will encourage Members to send more Priority Customer orders in SPY options to the Exchange even if it is an order which takes liquidity since they will be assessed a reduced Taker fee in each Tier. To the extent that Priority Customer order flow in SPY

<sup>16</sup> See *supra* note 12. See also NASDAQ OMX PHLX LLC Pricing Schedule, Section I.

options is increased by the proposal, market participants will increasingly compete for the opportunity to trade on the Exchange, including sending more orders which will have the potential to be assessed lower fees and higher rebates. The resulting increased volume and liquidity will benefit all Exchange participants by providing more trading opportunities and tighter spreads.

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

MIAX PEARL 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 proposed Taker fee decrease is intended to encourage liquidity and should enable the Exchange to attract and compete for order flow with other exchanges which assess higher Priority Customer Taker fees for SPY options.

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 change reflects this competitive environment because it modifies the Exchange's fees in a manner that encourages market participants 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,<sup>17</sup> and Rule 19b-4(f)(2)<sup>18</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine

whether the proposed rule should be approved or disapproved.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-PEARL-2017-30 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-2017-30. This file number should be included on the subject line if email 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 Web site (<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 Web site 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-PEARL-2017-30 and should be submitted on or July 10, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2017-12586 Filed 6-16-17; 8:45 am]

**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-80915; File No. SR-PEARL-2017-29]

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

June 13, 2017.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 7, 2017, 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.

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The text of the proposed rule change is available on the Exchange's Web site 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

<sup>17</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>18</sup> 17 CFR 240.19b-4(f)(2).

<sup>19</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.