

are required to have those registrations. Finally, making clear that FINRA, on behalf of the Exchange, will bill and collect these fees and referencing the rule which governs the Regulatory Element of the Continuing Education Requirements will bring greater transparency to FINRA's fees. Further, the proposal does not impose an undue burden on competition because the Exchange will not be collecting or retaining these fees, therefore, the Exchange will not be in a position to apply them in an inequitable or unfairly discriminatory manner.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or 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.¹¹

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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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. Please include File Number SR-GEMX-2021-10 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-GEMX-2021-10. 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 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-GEMX-2021-10, and should be submitted on or before December 13, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2021-25350 Filed 11-19-21; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-93591; File No. SR-NYSECHX-2021-16]

Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Update the Procedures for the Allocation of Cabinets and Power to Its Colocated Users

November 16, 2021.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the

"Act")² and Rule 19b-4 thereunder,³ notice is hereby given that, on November 3, 2021, the NYSE Chicago, Inc. ("NYSE Chicago" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. 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 proposes to update the procedures for the allocation of cabinets and power to its colocated Users. The proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, 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 self-regulatory organization 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 those 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 parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to establish⁴ procedures for the allocation of power to its co-located⁵ Users.⁶

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ The Commission notes that the Exchange proposes to update previously established procedures for allocation of cabinets and power to its colocated Users.

⁵ The Exchange initially filed rule changes relating to its co-location services with the Securities and Exchange Commission ("Commission") in 2019. See Securities Exchange Act Release No. 87408 (October 28, 2019), 84 FR 58778 (November 1, 2019) (SR-NYSECHX-2019-27).

⁶ For purposes of the Exchange's co-location services, a "User" means any market participant that requests to receive co-location services directly from the Exchange. See *id.*, at note 6. As specified in the Fee Schedule of NYSE Chicago, Inc. ("Fee Schedule"), a User that incurs co-location fees for a particular co-location service pursuant thereto

¹¹ 15 U.S.C. 78s(b)(3)(A)(ii).

¹² 17 CFR 200.30-3(a)(12).

¹³ 15 U.S.C. 78s(b)(1).

In December 2020, the Exchange established procedures for the allocation of cabinets in colocation should it become needed.⁷ In April 2021, the Exchange added procedures for the allocation of power in colocation (together with the cabinet procedures, the “Existing Procedures”).⁸

Proposed Changes to the Waitlist Procedures

Pursuant to the Existing Procedures, a Combined Waitlist is currently in effect. To be placed on the Combined Waitlist, a User must submit an order that complies with the Combined Limits—that is, the order must be for no more than 32 kW, and no more than four dedicated cabinets with standard power allocations of 4 kW or 8 kW as part of the 32 kW total.⁹

The Existing Procedures provide that “[a] User may only have one order for new cabinets and/or additional power on the Combined Waitlist at a time”¹⁰ The Exchange has become aware that some Users are attempting to circumvent this provision by submitting additional orders in the names of entities affiliated with the User.¹¹

The Exchange believes that such actions by Users are contrary to the objectives of the Existing Procedures, which were intended to foreclose Users from obtaining a greater portion of the cabinets and power available than the portion defined by the Cabinet Limits and Combined Limits. Such actions by

would not be subject to co-location fees for the same co-location service charged by the Exchange’s affiliates New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., and NYSE National, Inc. (together, the “Affiliate SROs”). Each Affiliate SRO has submitted substantially the same proposed rule change to propose the changes described herein. See SR-NYSE-2021-66; SR-NYSEAMER-2021-42; SR-NYSEArca-2021-96; SR-NYSENAT-2021-22.

⁷ See Securities Exchange Act Release No. 90732 (December 18, 2020), 85 FR 84443 (December 28, 2020) (SR-NYSE-2020-73, SR-NYSEAMER-2020-66, SR-NYSEArca-2020-82, SR-NYSECHX-2020-26, and SR-NYSENAT-2020-28).

⁸ See Securities Exchange Act Release No. 91515 (April 8, 2021), 86 FR 19674 (April 14, 2021) (SR-NYSE-2021-12, SR-NYSEAMER-2021-08, SR-NYSENAT-2021-03, SR-NYSEArca-2021-11, and SR-NYSECHX-2021-02). The Existing Procedures are set forth in General Notes 7 and 8 under “Co-location Fees” in the Fee Schedule.

⁹ See Fee Schedule, Co-Location Fees, General Notes 7 and 8.

¹⁰ See Fee Schedule, Co-Location Fees, General Note 8(b).

¹¹ For example, a User that wants 64 kW could submit an order for 32 kW to the Combined Waitlist, and then have an affiliated entity submit a second order to the Combined Waitlist for an additional 32 kW. Once the affiliated entity obtained its 32 kW, it could assign the power to the User. As a result, the User would obtain two times more power than the Combined Limit would allow. The Exchange has been informed that at least one User has contemplated utilizing affiliates for this purpose.

Users could result in a distribution of cabinets and power that is contrary to the intent of the Cabinet Limits and Combined Limits, with Users that are willing to submit multiple orders in the names of their affiliates obtaining more cabinets and power than the Cabinet Limits and Combined Limits allow, to the detriment of other Users seeking to purchase cabinets or power.

To address this issue, the Exchange proposes to amend the Existing Procedures to add to General Note 8(b) that “[w]hile a User is on the Combined Waitlist, no Affiliate of such User may also be on the Combined Waitlist.” The Exchange similarly proposes to amend General Note 8(a), regarding the Cabinet Waitlist, to provide that “[w]hile a User is on the Cabinet Waitlist, no Affiliate of such User may also be on the Cabinet Waitlist.” The term “Affiliate” is already defined in the Co-Location Fees section of the Fee Schedule as follows: “An ‘Affiliate’ of a User is any other User or Hosted Customer that is under 50% or greater common ownership or control of the first User.” This definition of “Affiliate” was introduced in connection with the Exchange’s filing regarding partial cabinet solutions, and the Exchange believes that the definition is appropriate to also use in the present context.¹²

Proposed Changes to the Purchasing Limit Procedures

The Exchange also proposes to amend the Existing Procedures regarding Cabinet and Power Purchasing Limits in General Note 7 to prevent Users from circumventing the Cabinet Limits and Combined Limits in a similar fashion when they are in effect but a waitlist is not. The Existing Procedures provide that when the Cabinet Limit or Combined Limits are in effect, a User will have to wait 30 days from the date of the User’s signed order before purchasing cabinets or power again. The Exchange proposes to amend such provisions to specify that this 30-day limitation applies not just to Users that have already purchased cabinets or power subject to the applicable Purchasing Limit, but also to any Affiliate of such User, so long as the applicable Purchasing Limit remains in effect.

General

The proposed rule change would apply the same way to all types and

¹² To the extent that the Combined Waitlist currently includes orders submitted by two or more Users that are Affiliates, the Exchange intends to remove all but the first of such Affiliates’ orders from the Combined Waitlist upon this proposed rule change becoming operative.

sizes of market participants. As is currently the case, the purchase of any colocation service is completely voluntary and the Fee Schedule is applied uniformly to all Users. The proposed change is not otherwise intended to address any other issues relating to colocation services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹³ in general, and with Section 6(b)(5),¹⁴ in particular, because 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 mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed rule change would prevent fraudulent and manipulative acts and practices, and would remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest, because it would prevent a User from obtaining a greater share of cabinets and power than the Existing Procedures intended, and thereby facilitate a more equitable distribution of cabinets and power.

As noted above, the Exchange has become aware that some Users are attempting to circumvent the Combined Waitlist by submitting additional orders in the names of entities affiliated with the User, in order to avoid the Existing Procedures’ prohibition against a User having more than one order on the Combined Waitlist at the same time. The Exchange believes that such actions by Users are contrary to the objectives of the Existing Procedures, which were intended to foreclose Users from obtaining a greater portion of the cabinets and power available than the portion defined by the Cabinet Limits and Combined Limits. Unless prohibited, such actions by Users could result in an inequitable distribution of cabinets and power, with Users that are

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

willing to submit multiple orders in the names of their affiliates obtaining more than their intended share of cabinets and power, to the detriment of other Users seeking to purchase cabinets and power. The proposed rule change to General Note 8 would address this concern.

The Exchange believes that the proposed amendments to the Existing Procedures regarding Cabinet and Power Purchasing Limits in General Note 7 would similarly prevent Users from circumventing the Cabinet Limits and Combined Limits when there is no waitlist in effect. The Exchange believes that having both Users and their Affiliates wait 30 days from the date of the signed order to purchase new cabinets or power would foreclose Users' ability to use their Affiliates to obtain a greater portion of the cabinets and power available. In this way, the Exchange believes that that the proposed amendments to General Note 7 would prevent fraudulent and manipulative acts and practices, and would remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

The proposed rule change would not unfairly discriminate between or among market participants, as it would apply to all types and sizes of market participants equally.

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

In accordance with Section 6(b)(8) of the Act,¹⁵ the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, the proposed rule change is designed to prevent Users from obtaining an unfair competitive advantage by submitting multiple orders in the names of affiliated entities, in order to avoid the Existing Procedures' prohibition against a User having more than one order on the Cabinet Waitlist or the Combined Waitlist at the same time and to obtain a greater portion of the cabinets and power available than the portion defined by the Cabinet Limits and Combined Limits. The proposed rule change would prevent a User from obtaining this unfair competitive advantage, thereby facilitating a more equitable distribution of cabinets and power.

¹⁵ 15 U.S.C. 78f(b)(8).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁶ and Rule 19b-4(f)(6) thereunder.¹⁷ Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.¹⁸

A proposed rule change filed under Rule 19b-4(f)(6)¹⁹ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),²⁰ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange believes that implementing the proposed rule change as soon as possible would allow the Exchange to prevent Users from unfairly obtaining more cabinets or power than the Existing Procedures were intended to provide. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.²¹

¹⁶ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁷ 17 CFR 240.19b-4(f)(6).

¹⁸ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires the Exchange to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹⁹ 17 CFR 240.19b-4(f)(6).

²⁰ 17 CFR 240.19b-4(f)(6)(iii).

²¹ For purposes only of waiving the 30-day operative delay, the Commission has considered the

At any time within 60 days of the filing of such 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 under Section 19(b)(2)(B)²² of the Act to determine whether the proposed rule change 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. Please include File Number SR-NYSECHX-2021-16 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-NYSECHX-2021-16. 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 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

proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²² 15 U.S.C. 78s(b)(2)(B).

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-NYSECHX-2021-16 and should be submitted on or before December 13, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²³

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2021-25357 Filed 11-19-21; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-93594; File No. SR-PEARL-2021-55]

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 and the MIAX Pearl Equities Fee Schedule To Establish a Policy Relating to Billing Errors

November 16, 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 November 5, 2021, MIAX PEARL, LLC (“MIAX Pearl” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I and II 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 and the MIAX Pearl Equities Fee Schedule to establish a policy relating to billing errors.

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.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend MIAX’s Pearl Fee Schedule and the MIAX Pearl Equities Fee Schedule to establish a policy relating to billing errors. More specifically, the Exchange proposes to amend the footer on the Title page of each Fee Schedule to adopt language that would provide that all fees and rebates assessed prior to the three full calendar months before the month in which the Exchange becomes aware of a billing error shall be considered final. Particularly, the Exchange will resolve an error by crediting or debiting Members³ and non-Members based on the fees or rebates that should have been applied in the three full calendar months preceding the month in which the Exchange became aware of the error, which includes all impacted transactions that occurred during those months.⁴ The Exchange will apply the three month look back regardless of whether the error was discovered by the Exchange or by a Member or non-

³ The term “Member” means an individual or organization that is registered with the Exchange pursuant to Chapter II of the MIAX Pearl 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 Exchange Rule 100.

⁴ For example, if the Exchange becomes aware of a transaction fee billing error on December 1, 2021, the Exchange will resolve the error by crediting or debiting Members and non-Members based on the fees or rebates that should have been applied to any impacted transactions during September, October and November 2021. The Exchange notes that because it bills in arrears, the Exchange would be able to correct the error in advance of issuing the December 2021 invoice and therefore, transactions impacted through the date of discovery (in this example, December 1, 2021) and thereafter, would be billed correctly.

Member that submitted a fee dispute to the Exchange.⁵

The purpose of the proposed change is to encourage Members and non-Members to promptly review their Exchange invoices so that any disputed charges can be addressed in a timely manner. The Exchange notes that it provides Members with both daily and monthly fee reports and thus believes they should be aware of any potential billing errors within three months. Further, any fees assessed on non-Members are sent as monthly invoices, and thus these firms will likewise receive sufficient notice of any potential billing errors. The requirement that Members and non-Members submit disputes in writing and provide supporting documentation in a timely manner while the information and data underlying those charges (e.g., applicable fees and order information) is still easily and readily available is not changing under this proposal.

The proposed rule change to provide all fees and rebates assessed prior to the three full calendar months before the month in which the Exchange becomes aware of a billing error shall be considered final provides both the Exchange and Members and non-Members finality and the ability to close their books after a known period of time. The proposed change encourages Members and non-Members to provide a timely review of their billing invoices.

The Exchange notes that it routinely conducts audits of its Members and non-Members to ensure that each is complying with the terms and conditions of the subscriber agreement they have signed. The audit process is independent of the billing process. The audit function is administered by the Exchange’s Member Services Group and the billing function is administered by the Exchange’s Trading Operations Group. Each group is charged with distinct responsibilities that do not overlap. The proposed billing fee finality provision is not intended to circumvent the audit process in any manner and the adoption of the three month look back period, beyond which billing errors would be considered final, would not affect a Member or non-Member’s ability to take a position with respect to billing charges identified through the audit process.

⁵ The Exchange notes that the current policy which states that all fee disputes must be submitted no later than sixty (60) days after receipt of a billing invoice will remain in place.

²³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.