



8011-01

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-87233; File No. SR-PEARL-2019-27]

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

October 4, 2019.

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 September 20, 2019, 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 establish one-time membership application fees for MIAX PEARL Members.³

The Exchange previously filed to establish one-time membership application fees on June 28, 2019 (SR-PEARL-2019-22).⁴ That filing was withdrawn on August 27, 2019. It is replaced with the current filing (SR-PEARL-2019-27).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ “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 Exchange Rule 100.

⁴ See Securities Exchange Act Release No. 86363 (July 12, 2019), 84 FR 34445 (July 18, 2019) (SR-PEARL-2019-22) (the “Second Proposed Rule Change”).

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 Exchange proposes to amend the Fee Schedule to establish one-time membership application fees based upon the applicant’s status as either an Electronic Exchange Member⁵ (“EEM”) or as a Market Maker.⁶ MIAX PEARL commenced operations as a national securities exchange registered under Section 6 of the Act⁷ on February 6, 2017.⁸ The Exchange adopted its

⁵ “Electronic Exchange Member” or “EEM” means the holder of a Trading Permit who is a Member representing as agent Public Customer Orders or Non-Customer Orders on the Exchange and those non-Market Maker Members conducting proprietary trading. Electronic Exchange Members are deemed “members” under the Exchange Act. See Exchange Rule 100. See the Definitions Section of the Fee Schedule.

⁶ “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 Exchange Rule 100. See the Definitions Section of the Fee Schedule.

⁷ 15 U.S.C. 78f.

transaction fees and certain of its non-transaction fees in its filing SR-PEARL-2017-10.⁹ In that filing, the Exchange expressly waived the one-time membership application fees to provide an incentive to prospective EEMs and Market Makers to become Members of the Exchange. At that time, the Exchange waived one-time membership application fees for the Waiver Period¹⁰ and stated that it would provide notice to market participants when the Exchange intended to terminate the Waiver Period.

On March 14, 2019, the Exchange issued a Regulatory Circular that the Exchange would be ending the Waiver Period for one-time membership application fees, among other non-transaction fees, beginning on April 1, 2019.¹¹ The Exchange initially filed the proposal on March 27, 2019, designating the proposed fees effective April 1, 2019.¹² The First Proposed Rule Change was published for comment in the Federal Register on April 12, 2019.¹³ The proposed fees remained in effect until the Exchange withdrew the First Proposed Rule Change

⁸ See Securities Exchange Act Release No. 79543 (December 13, 2016), 81 FR 92901 (December 20, 2016) (File No. 10-227) (order approving application of MIAX PEARL, LLC for registration as a national securities exchange).

⁹ See Securities Exchange Act Release No. 80061 (February 17, 2017), 82 FR 11676 (February 24, 2017) (SR-PEARL-2017-10).

¹⁰ “Waiver Period” means, for each applicable fee, the period of time from the initial effective date of the MIAX PEARL Fee Schedule until such time that the Exchange has an effective fee filing establishing the applicable fee. The Exchange will issue a Regulatory Circular announcing the establishment of an applicable fee that was subject to a Waiver Period at least fifteen (15) days prior to the termination of the Waiver Period and effective date of any such applicable fee. See the Definitions Section of the Fee Schedule.

¹¹ See MIAX PEARL Regulatory Circular 2019-09 available at https://www.miaxoptions.com/sites/default/files/circular-files/MIAX_PEARL_RC_2019_09.pdf.

¹² See Securities Exchange Act Release No. 85541 (April 8, 2019), 84 FR 14983 (April 12, 2019) (SR-PEARL-2019-12) (the “First Proposed Rule Change”).

¹³ See *id.*

on May 20, 2019.¹⁴ The First Proposed Rule Change included additional fee changes to adopt certain other non-transaction fees and to terminate the three-month New Member Non-Transaction Fee Waiver and Waiver Period.¹⁵

The Exchange refiled the proposal on June 28, 2019, designating the proposed fees effective July 1, 2019.¹⁶ The Second Proposed Rule Change was published for comment in the Federal Register on July 18, 2019.¹⁷ The proposed fee changes remained in effect until the Exchange withdrew the Second Proposed Rule Change on August 27, 2019.¹⁸ The Second Proposed Rule Change included additional fee changes to adopt certain other non-transaction fees and to terminate the three-month New Member Non-Transaction Fee Waiver and Waiver Period.¹⁹ The Exchange is now re-filing the proposal to establish one-time membership application fees for EEMs and Market Makers. The Exchange will file separate proposals to establish certain other non-transaction fees and to terminate the New Member Non-Transaction Fee Waiver and Waiver Period.

MIAX PEARL Membership Application Fee

The Exchange proposes to assess a one-time membership application fee based upon the applicant's status as either an EEM or as a Market Maker. The Exchange proposes that applicants for MIAX PEARL Membership as an EEM will be assessed a one-time application fee of \$500. The Exchange proposes that applicants for MIAX PEARL Membership as a Market

¹⁴ See Letter from Gregory P. Ziegler, AVP and Senior Associate Counsel, MIAX PEARL, LLC, to Vanessa Countryman, Acting Secretary, Commission, dated May 17, 2019.

¹⁵ See supra note 12.

¹⁶ See supra note 4.

¹⁷ See id.

¹⁸ See Letter from Joseph Ferraro, SVP and Deputy General Counsel, MIAX PEARL, LLC, to Vanessa Countryman, Acting Secretary, Commission, dated August 26, 2019.

¹⁹ See supra note 4.

Maker will be assessed a one-time application fee of \$1,500. The difference in the proposed membership application fee to be charged to EEMs and Market Makers is because of the additional review and resources involved in processing a Market Maker’s application, as Market Makers have greater and more complex obligations with respect to doing business on the Exchange. MIAX PEARL’s proposed one-time membership application fees are similar to and generally lower than one-time application fees in place at the Cboe Exchange, Inc. (“Cboe”) (\$3,000 for an individual applicant and \$5,000 for an applicant organization)²⁰ and at Nasdaq ISE, LLC (“Nasdaq ISE”) (\$7,500 per firm for a primary market maker, \$5,500 per firm for a competitive market maker, and \$3,500 per firm for an electronic market maker).²¹ Below is the

Type of Membership	Application Fee
Electronic Exchange Member	\$500.00
Market Maker	\$1,500.00

table for the proposed one-time membership application fee for MIAX PEARL:

MIAX PEARL will assess a one-time Membership Application Fee on the earlier of (i) the date the applicant is certified in the membership system, or (ii) once an application for MIAX PEARL membership is finally denied.

Applicability to and Impact on Participants

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In

²⁰ See Cboe Fees Schedule, p. 12, Cboe Trading Permit Holder Application Fees.

²¹ See Nasdaq ISE, Options Rules, Options 7, Pricing Schedule, Section 9. Legal and Regulatory A. Application.

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.”²²

There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than approximately 16% market share.²³ Therefore, no exchange possesses significant pricing power. More specifically, as of September 9, 2019, the Exchange had an approximately 5.30% market share of executed volume of multiply-listed equity and exchange traded fund (“ETF”) options.²⁴ 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, or shift order flow, in response to non-transaction and transaction fee changes. For example, on September 28, 2018, the Exchange filed with the Commission a proposal to decrease a transaction fee for certain types of orders (which fee was to be effective October 1, 2018).²⁵ The Exchange experienced an increase in total market share in the month of October 2018, after the proposal went into effect. Accordingly, the Exchange believes that the October 1, 2018 fee change, decreasing a transaction fee, may have contributed to the increase in the Exchange’s market share and, as such, the Exchange believes competitive forces constrain

²² See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

²³ The Options Clearing Corporation (“OCC”) publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available here: <https://www.theocc.com/market-data/volume/default.jsp>.

²⁴ See id.

²⁵ See Securities Exchange Act Release No. 84387 (October 9, 2018), 83 FR 52039 (October 15, 2018) (SR-PEARL-2018-21).

MIAX PEARL's, and other options exchanges, ability to set non-transaction and transaction fees and market participants can shift order flow based on fee changes instituted by the exchanges.

The proposed adoption of a one-time membership application fee applicable to EEMs and Market Markers would be applied uniformly to each of these market participants. Further, as there are currently 16 registered options exchanges competing for order flow with no single exchange accounting for more than approximately 16% of market share, the Exchange cannot predict with certainty whether any participant is planning to become a Member and thus would be subject to the proposed fees.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act²⁶ in general, and furthers the objectives of Section 6(b)(4) of the Act²⁷ in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act in that it is designed 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 is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes that the proposed change to adopt a one-time membership application fee applicable to EEMs and Market Markers as described above is reasonable in several respects. First, the Exchange is subject to significant competitive forces in the market for options transaction and non-transaction services that constrain its pricing determinations in that

²⁶ 15 U.S.C. 78f(b).

²⁷ 15 U.S.C. 78f(b)(4) and (5).

market. 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.”²⁸

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options transaction services. The Exchange is one of several options venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than approximately 16% of the market share of executed volume of multiply-listed equity and ETF options.²⁹ Therefore, no exchange possesses significant pricing power. More specifically, as of September 9, 2019, the Exchange had approximately a 5.30% market share of executed volume of multiply-listed equity and ETF options.³⁰

²⁸ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

²⁹ The Options Clearing Corporation (“OCC”) publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available here: <https://www.theocc.com/market-data/volume/default.jsp>.

³⁰ See id.

The Exchange also 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, or shift order flow, in response to non-transaction and transaction fee changes. For example, on September 28, 2018, the Exchange filed with the Commission a proposal to decrease a transaction fee for certain types of orders (which fee was to be effective October 1, 2018).³¹ The Exchange experienced an increase in total market share in the month of October 2018, after the proposal went into effect. Accordingly, the Exchange believes that the October 1, 2018 fee change, decreasing a transaction fee, may have contributed to the increase in the Exchange's market share and, as such, the Exchange believes competitive forces constrain MIAX PEARL's, and other options exchanges, ability to set non-transaction and transaction fees and market participants can shift order flow based on fee changes instituted by the exchanges. Further, the Exchange no longer believes it is necessary to waive these fees to attract market participants to the MIAX PEARL market since this market is now established and MIAX PEARL no longer needs to rely on such waivers to attract market participants. The Exchange believes that the proposed change is equitable and not unfairly discriminatory because the elimination of the fee waiver for one-time membership application fees will uniformly apply to all EEMs and Market Makers seeking to become Members of the Exchange. Additionally, The [sic] Exchange believes its proposal for a one-time membership application fees applicable to EEMs and Market Markers is reasonable and well within the range of fees assessed among other exchanges, including the Exchange's affiliate, MIAX.³²

³¹ See Securities Exchange Act Release No. 84387 (October 9, 2018), 83 FR 52039 (October 15, 2018) (SR-PEARL-2018-21).

³² See the MIAX Options Fee Schedule.

The Exchange believes its one-time membership application fees are reasonable, equitable and not unfairly discriminatory. As described above, the one-time application fees are similar to the application fees in place at other options exchanges,³³ and are associated with the time and resources of processing of such applications. The Exchange believes that it is reasonable, equitable, and not unfairly discriminatory that Market Maker applicants are charged slightly more than EEM applicants because of the additional review and resources involved in processing a Market Maker's application, as Market Makers have greater and more complex obligations with respect to doing business on the Exchange.

Finally, 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 fees for services and products, in addition to order flow, to remain competitive with other exchanges. The Exchange believes that the proposed changes reflect this competitive environment.

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

MIAX PEARL does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Intra-Market Competition

The Exchange does not believe that the proposed rule change would place certain market participants at the Exchange at a relative disadvantage compared to other market participants or affect the ability of such market participants to compete. Unilateral action by MIAX PEARL in the assessment of one-time membership application fees will not have an impact on competition. As a more recent entrant in the already highly competitive environment for equity options

³³ See supra notes 20 and 21.

trading, MIAX PEARL does not have the market power necessary to set prices for services that are unreasonable or unfairly discriminatory in violation of the Act. MIAX PEARL's proposed one-time membership application fees, as described herein, are comparable to fees charged by other options exchanges for the same or similar services, including those fees assessed by its affiliate, MIAX.³⁴

The Exchange believes that the proposed one-time membership application fees do not place certain market participants at a relative disadvantage to other market participants because the pricing is associated with the Exchange's time and resources to process such applications. The proposed one-time membership application fees do not apply unequally to different size market participants, but instead would allow the Exchange to charge for reviewing and processing Market Maker and EEM membership applications. Accordingly, the proposed one-time membership application fees do not favor certain categories of market participants in a manner that would impose a burden on competition.

Further, the Exchange believes that the proposed rule change will promote transparency by making it clear to EEMs and Market Makers the fees that MIAX PEARL will assess for Membership application to MIAX PEARL. This will permit EEMs and Market Makers to more accurately anticipate and account for the costs of one-time membership application in order to become Members of the Exchange, which promotes consistency.

Inter-Market Competition

The Exchange believes the proposed one-time membership application fees do not place an undue burden on competition on other SROs that is not necessary or appropriate. The Exchange operates in a highly competitive market in which market participants can readily favor

³⁴ See the MIAX Options Fee Schedule.

one of the 16 competing options venues if they deem fee levels at a particular venue to be excessive.³⁵ Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% market share. Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. As of September 9, 2019, the Exchange had an approximately 5.30% market share³⁶ and the Exchange believes that the ever-shifting market share among exchanges from month to month demonstrates that market participants can discontinue or reduce use of certain categories of products, or shift order flow, in response to fee changes. In such an environment, the Exchange must continually adjust its fees and fee waivers to remain competitive with other exchanges and to attract 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,³⁷ and Rule 19b-4(f)(2)³⁸ 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.

³⁵ See supra note 23.

³⁶ Id.

³⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

³⁸ 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-2019-27 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-2019-27. 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-2019-27 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.³⁹

Jill M. Peterson,
Assistant Secretary.

³⁹ 17 CFR 200.30-3(a)(12).

[FR Doc. 2019-22143 Filed: 10/9/2019 8:45 am; Publication Date: 10/10/2019]