

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-89316; File No. SR-PEARL-2020-09]

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

July 14, 2020.

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 June 30, 2020, 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 increase the number of additional Limited Service MIAX Express Order Interface (“MEO”) Ports available to Market Makers.³ The Exchange does not propose to amend the fees for additional Limited Service MEO Ports.

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 offer two (2) additional Limited Service MEO Ports to Market Makers. The Exchange does not propose to amend the fees charged for the additional Limited Service MEO Ports.

The Exchange currently offers different options of MEO Ports depending on the services required by an Exchange Member,⁴ including a Full Service MEO Port-Bulk,⁵ a Full Service MEO Port-Single,⁶ and a Limited Service MEO Port.⁷ Currently, a Member may be allocated two (2) Full-Service MEO Ports of either type, Bulk and/or Single, per Matching Engine, and up to eight (8) Limited Service MEO Ports, per Matching Engine. The two (2) Full-Service MEO Ports that may be allocated per Matching Engine to a Member currently may consist of: (a) Two (2) Full Service MEO Ports—Bulk; or (b) two (2) Full Service MEO Ports—Single. The Exchange also has a third option, option (c), which permits a Member to have one (1) Full Service MEO Port—Bulk, and one (1) Full Service MEO Port—Single.

The Exchange currently provides Market Makers the first two (2) requested Limited Service MEO Ports free of charge and charges \$200 per month for Limited Service MEO Ports three (3) and four (4), \$300 per month for Limited Service MEO Ports five (5) and six (6), and \$400 per month for Limited Service MEO Ports seven (7) and eight (8). These fees have been

unchanged since they were adopted in 2018.⁸

The Exchange originally added the Limited Service MEO Ports to enhance the MEO Port connectivity made available to Market Makers. Limited Service MEO Ports have been well received by Market Makers since their addition. The Exchange now proposes to offer to Market Makers the ability to purchase an additional two (2) Limited Service MEO Ports per matching engine over and above the current six (6) additional Limited Service MEO Ports per matching engine that are available for purchase by Market Makers. The Exchange proposes making a corresponding change to the text in the Port Fee table and to the text below the Port Fee table in Section 5(d) of the Fee Schedule to specify that Market Makers will now be limited to purchasing eight (8) additional Limited Service MEO Ports per matching engine, for a total of ten (10) per matching engine. All fees related to MEO Ports shall remain unchanged and Market Makers that voluntarily purchase the additional ninth or tenth Limited Service MEO Ports will be subject to the existing \$400 monthly fee per port that is charged to Market Makers that request a seventh or eighth Limited Service MEO Port.

The Exchange is increasing the number of additional Limited Service MEO Ports because the Exchange is expanding its network. This network expansion is necessary due to increased customer demand and increased volatility in the marketplace, both of which have translated into increased message traffic rates across the network. Consequently, this network expansion, which increases the number of switches supporting customer facing systems, is necessary in order to provide sufficient access to new and existing Members, to maintain a sufficient amount of network capacity head-room, and to continue to provide the same level of service across the Exchange’s low-latency, high-throughput technology environment.

Currently, the Exchange has 8 network switches that support the entire customer base of MIAX Options and MIAX PEARL. The Exchange plans to increase this to 10 switches, which will increase the number of available customer ports by 25%. This increase in the number of available customer ports will enable the Exchange to continue to provide sufficient and equal access to the MIAX PEARL System to all Members. Absent the proposed increase in available MEO Ports, the Exchange

⁴ The term “Member” means an individual or organization that is registered with the Exchange pursuant to Chapter II of these 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.

⁵ “Full Service MEO Port—Bulk” means an MEO port that supports all MEO input message types and binary bulk order entry. See the Definitions Section of the Fee Schedule.

⁶ “Full Service MEO Port—Single” means an MEO port that supports all MEO input message types and binary order entry on a single order-by-order basis, but not bulk orders. See the Definitions Section of the Fee Schedule.

⁷ “Limited Service MEO Port” means an MEO port that supports all MEO input message types, but does not support bulk order entry and only supports limited order types, as specified by the Exchange via Regulatory Circular. See the Definitions Section of the Fee Schedule.

⁸ See Securities Exchange Act Release No. 83867 (March 13, 2018), 83 FR 12044 (March 19, 2018) (SR-PEARL-2018-07).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The term “Market Maker” or “MM” 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 the Exchange’s Rules. See Exchange Rule 100.

projects that its current inventory will be depleted and it will lack sufficient capacity to continue to meet Members' access needs.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act⁹ in general, and furthers the objectives of Section 6(b)(5) of the Act¹⁰ 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 its proposal is consistent with the objectives of Section 6(b)(5) of the Act¹¹ because the proposed additional Limited Service MEO Ports will be available to all Market Makers and the current fees for the additional Limited Service MEO Ports apply equally to all Market Makers regardless of type, and access to the Exchange is offered on terms that are not unfairly discriminatory. The Exchange is proposing to increase the number of available Limited Service MEO Ports because the Exchange is expanding its network. This network expansion is necessary due to increased customer demand and increased volatility in the marketplace, both of which have translated into increased message traffic rates across the network. Consequently, this network expansion, which increases the number of switches supporting customer facing systems, is necessary in order to provide sufficient and equal access to new and existing Members, to maintain a sufficient amount of network capacity head-room, and to continue to provide the same level of service across the Exchange's low-latency, high-throughput technology environment.

Currently, the Exchange has 8 network switches that support the entire customer base of MIAX Options and MIAX PEARL. The Exchange plans to increase this to 10 switches, which will increase the number of available customer ports by 25%. This increase in the number of available customer ports will enable the Exchange to continue to provide sufficient and equal access to MIAX PEARL Systems for all Members. Absent the proposed increase in available MEO Ports, the Exchange

projects that its current inventory will be depleted and it will lack sufficient capacity to continue to meet Members' access needs. Further, the Exchange notes that decision of whether to purchase two additional Limited Service MEO Ports is completely optional and it is a business decision for each Market Maker to determine whether the additional Limited Service MEO Ports are necessary to meet their business requirements.

The Exchange further believes that the availability of the additional Limited Service MEO Ports is equitable and not unfairly discriminatory because it will enable Market Makers to maintain uninterrupted access to the MIAX PEARL System and consequently enhance the marketplace by helping Market Makers to better manage risk, thus preserving the integrity of the MIAX markets, all to the benefit of and protection of investors and the public as a whole.

The Exchange also believes that its proposal is consistent with Section 6(b)(4) of the Act because only Market Makers that voluntarily purchase the two additional Limited Service MEO Ports will be charged the existing \$400 monthly fee per port applicable to ports seven (7) and eight (8), which has been unchanged since adopted 2018.¹² The Exchange does not propose to amend the fees applicable to additional Limited Service MEO Ports which have been previously filed with the Commission and become effective after notice and public comment.¹³ As stated above, the Exchange proposes to expand its network by making available two additional Limited Service MEO Ports due to increased customer demand and increased volatility in the marketplace, both of which have translated into increased message traffic rates across the network. The cost to expand the network in this manner is greater than the revenue the Exchange anticipates the additional Limited Service MEO Ports will generate. Specifically, the Exchange estimates it will cost approximately \$350,000 in capital expenditures on hardware, software, and other items to expand the network to make available the two additional Limited Service MEO Ports. This estimated cost also includes providing the necessary engineering and support personnel to transition those Market Makers who wish to acquire the two additional Limited Service MEO Ports.

The Exchange projects that approximately six or seven Market Makers will elect to purchase the

additional Limited Service MEO Ports, which will be subject to the existing monthly fee of \$400 per port applicable to ports seven (7) and eight (8). Accordingly, the Exchange projects that the annualized revenue from the two additional Limited Service MEO Ports will be approximately \$67,200 (assuming that seven Market Makers purchase the two additional Limited Service MEO Ports). Therefore, the Exchange's cost in expanding its network to provide its Members with the two additional Limited Service MEO Ports—approximately \$350,000—is clearly greater than the anticipated annualized revenue the Exchange expects to bring in from the two additional Limited Service MEO Ports—approximately \$67,200. Thus, the Exchange is not generating a supra-competitive profit from the provision of these two additional Limited Service MEO Ports.

Subjecting the two additional Limited Service MEO Ports to the existing \$400 monthly fee per port applicable to ports seven (7) and eight (8) is also designed to encourage Market Makers to be efficient with their port usage, thereby resulting in a corresponding increase in the efficiency that the Exchange would be able to realize in managing its aggregate costs for providing the two additional ports. There is no requirement that any Market Maker maintain a specific number of Limited Service MEO Ports and a Market Maker may choose to maintain as many or as few of such ports as each Market Maker deems appropriate.

Finally, subjecting the two additional Limited Service MEO Ports to the existing \$400 monthly fee applicable to ports seven (7) and eight (8) will help to encourage Limited Service MEO Port usage in a way that aligns with the Exchange's regulatory obligations. As a national securities exchange, the Exchange is subject to Regulation Systems Compliance and Integrity ("Reg. SCI").¹⁴ Reg. SCI Rule 1001(a) requires that the Exchange establish, maintain, and enforce written policies and procedures reasonably designed to ensure (among other things) that its Reg. SCI systems have levels of capacity adequate to maintain the Exchange's operational capability and promote the maintenance of fair and orderly markets.¹⁵ By encouraging Members to be efficient with their usage of Limited MEO Ports, the current fee that will continue to apply to the proposed two (2) additional Limited Service MEO Ports will support the Exchange's Reg.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ 15 U.S.C. 78f(b)(5).

¹² See *supra* note 7.

¹³ *Id.*

¹⁴ 17 CFR 242.1000–1007.

¹⁵ 17 CFR 242.1001(a).

SCI obligations in this regard by ensuring that unused ports are available to be allocated based on individual Members needs and as the Exchange's overall order and trade volumes increase.

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

MIAX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The proposed rule change will not impose a burden on competition but will benefit competition by enhancing the Exchange's ability to compete by providing additional services to market participants. It is not intended to address a competitive issue. Rather, the proposed increase in the number of additional Limited Service MEO Ports available per Market Maker is intended to allow the Exchange to increase its inventory of MEO Ports to meet increased Member demand. The Exchange is increasing the number of available additional Limited Service MEO Ports in response to Market Maker demand for increased connectivity to the MIAX PEARL System. The Exchange's current inventory may soon be insufficient to meet those needs. Again, the Exchange is not proposing to amend the fees for MEO Ports, just to increase the number of MEO Ports available per Market Maker. The Exchange also does not believe that the proposed rule change will impose a burden on intramarket competition because the two additional Limited Service MEO Ports will be available to all Market Makers on an equal basis. It is a business decision of each Market Maker whether to pay for the additional Limited Service MEO Ports.

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,¹⁶ and Rule 19b-4(f)(2)¹⁷ 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. Please include File Number SR-PEARL-2020-09 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-2020-09. 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-PEARL-2020-09 and should be submitted on or before August 10, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-89309; File No. SR-NASDAQ-2020-002]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change To Amend the Procedures Governing the Introduction of Legal Arguments and Material Information by Companies in a Proceeding Before a Hearings Panel

July 14, 2020.

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 July 2, 2020, The Nasdaq Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the 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 proposes to amend the procedures governing the introduction of legal arguments and material information by companies in a proceeding before a Hearings Panel.

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules>, 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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed

¹⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

¹⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁷ 17 CFR 240.19b-4(f)(2).