

30, 2020, Applicant derived approximately 82% of its gross income from securities (other than Qualifying Real Estate Assets) and approximately 18% of its gross income from Qualifying Real Estate Assets. Applicant expects its income from securities (other than Qualifying Real Estate Assets and other assets that are not Qualifying Real Estate Assets but which are real estate-related assets ("Real Estate-Related Assets") to continue to decrease, and its income from Qualifying Real Estate Assets and Real Estate-Related Assets to continue to increase, as it continues to divest its legacy portfolio assets and reinvest in Qualifying Real Estate Assets and Real Estate-Related Assets. Applicant represents that currently it derives no material portion of its gross income from securities that are not Qualifying Real Estate Assets or Real Estate-Related Assets.

8. Upon deregistering as an investment company, which will be the final step in implementing the Business Change Proposal, Applicant represents that it will issue a press release to shareholders indicating that it is no longer a registered investment company and will cease indicating in its financial statements that it is a registered investment company.

9. Applicant states that it is not currently a party to any litigation or administrative proceeding and has timely complied with its obligations to file annual and other reports with the Commission.

10. Applicant represents that, if the requested order is granted, its common shares will continue to be traded on The Nasdaq Stock Market LLC.

#### Applicant's Legal Analysis:

1. Section 8(f) of the Act provides that whenever the Commission, upon application or its own motion, finds that a registered investment company has ceased to be an investment company, the Commission shall so declare by order and upon the taking effect of such order, the registration of such company shall cease to be in effect.

2. Section 3(a)(1)(A) of the Act defines an "investment company" as any issuer which "is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities." Section 3(a)(1)(B) of the Act defines an "investment company" as any issuer which "is engaged or proposes to engage in the business of issuing face-amount certificates of the installment type, or has been engaged in such business and has any such certificate outstanding."

3. Section 3(a)(1)(C) of the Act defines an "investment company" as any issuer

which "is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 per centum of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis." Section 3(a)(2) of the Act defines "investment securities" as "all securities except (A) Government securities, (B) securities issued by employees' securities companies, and (C) securities issued by majority-owned subsidiaries of the owner which (i) are not investment companies, and (ii) are not relying on the exception from the definition of investment company in paragraph (1) or (7) of subsection (c)."

4. Applicant states that it is no longer an investment company as defined in section 3(a)(1)(A), 3(a)(1)(B) or section 3(a)(1)(C). With regard to section 3(a)(1)(A), Applicant represents that it now operates as a commercial mortgage REIT, and argues that its historical development, its public representations, the activities of its directors and officers, the nature of its present assets and the sources of its present income support this assertion.

5. With regard to section 3(a)(1)(B), Applicant represents that it is not engaged, and does not propose to engage, in the business of issuing face-amount certificates of the installment type, has not been engaged in such business and does not have any such certificate outstanding.

6. With regard to section 3(a)(1)(C), Applicant represents that, as discussed in greater detail below, the Real Estate Subsidiary is excluded from the definition of investment company by virtue of section 3(c)(5)(C) of the Act and that, as a result, securities issued by the Real Estate Subsidiary are not "investment securities" within the meaning of section 3(a)(2) of the Act. Because the value of Applicant's interest in the Real Estate Subsidiary exceeds 60% of the value of Applicant's Adjusted Total Assets, the value of any "investment securities" owned by Applicant is less than 40% of the value of Applicant's Adjusted Total Assets. Applicant, therefore, states that it is not an investment company within the meaning of section 3(a)(1)(C) of the Act.

7. Section 3(c)(5)(C) of the Act excludes from the definition of an investment company "any person who is not engaged in the business of issuing redeemable securities, face-amount certificates of the installment type or periodic payment plan certificates, and who is primarily engaged in one or more of the following businesses: . . . (C)

purchasing or otherwise acquiring mortgages and other liens on and interests in real estate."

8. Applicant represents that, as of November 30, 2020, the only assets of the Real Estate Subsidiary were mortgage loans fully secured by real estate and, as a result, the Real Estate Subsidiary meets the exclusion from the definition of investment company in section 3(c)(5)(C).

9. Applicant states that it is thus qualified for an order of the Commission pursuant to section 8(f) of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2020-27206 Filed 12-10-20; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90579; File No. SR-PEARL-2020-28]

### Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 2611, Odd and Mixed Lots

December 7, 2020.

Pursuant to 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 November 23, 2020, MIAX PEARL, LLC ("MIAX PEARL" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the 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 Exchange Rule 2611 regarding the handling of odd lot sized orders.

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.

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

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

## 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 Exchange Rule 2611 to provide that odd lot orders<sup>3</sup> would no longer be processed differently than orders that are a round lot or greater in size.<sup>4</sup> Exchange Rule 2611 sets forth the requirements relating to odd and mixed lot trading of equity securities on the Exchange's equity trading platform (referred to herein as "MIAX PEARL Equities"). Exchange Rule 2611(b) further provides that round lot, mixed lot, and odd lot orders are treated in the same manner on the Exchange, provided that, the working and display price of a displayable odd lot order will be adjusted both on arrival and when resting on the MIAX PEARL Equities Book.<sup>5</sup>

Currently, Exchange Rule 2611(b)(1) and subparagraphs (A)–(C) describe how the working and displayed price of odd lot orders are adjusted in relation to the contra-side Protected Best Bid ("PBB") or Protected Best Offer ("PBO", collectively with PBB, the "PBBO"). In short, working and displayed prices of odd lot orders are bound by either the PBBO of an away trading center or of the Exchange, which means resting odd

lot orders can be re-priced if the PBBO changes or becomes locked or crossed.

Specifically, current Exchange Rule 2611(b)(1)(A) reflects standard behavior and provides that if the limit price of an odd lot order to buy (sell) is below (above) the PBO (PBB) of an away Trading Center, it will have a working and display price equal to the limit price. Current Exchange Rule 2611(b)(1)(B) provides that if the limit price of an odd lot order to buy (sell) is at or above (below) the PBO (PBB) of an away Trading Center, it will have a working price equal to the PBO (PBB). The display price will also be adjusted to one minimum price variation lower (higher) than the PBO (PBB). Current Exchange Rule 2611(b)(1)(C) provides that if the PBBO is locked or crossed and the limit price of an odd lot order to buy (sell) resting on the MIAX PEARL Equities Book is above (below) the PBO (PBB) of an away Trading Center, it will have a working and display price equal to the PBB (PBO) of the Exchange. Current Exchange Rule 2611(b)(1)(C) further provides that the working and display price of such odd lot order will be adjusted again pursuant to paragraphs (A) and (B) of Exchange Rule 2611(b)(1) should the PBBO unlock or uncross.

As proposed, odd lot sized orders would be handled in the same manner as orders of a round lot size or higher, and if they are designated displayed, they would stand their ground if locked or crossed by the PBBO of an away trading center.<sup>6</sup> The proposal would, therefore, result in fewer orders being re-priced, thereby allowing those orders to retain their priority on the MIAX PEARL Equities Book. To effect this change, the Exchange proposes to delete Exchange Rule 2611(b)(1) and subparagraphs (A)–(C) in their entirety. As a result of these changes, Exchange Rule 2611(b) would provide, without any qualifiers, that "[r]ound lot, mixed lot and odd lot orders are treated in the same manner on the Exchange." The Exchange proposes an additional non-substantive change to renumber current Exchange Rule 2611(b)(2) as Exchange Rule 2611(c).

#### Implementation

Due to the technological changes associated with this proposed change, the Exchange will issue a trading alert publicly announcing the implementation date of this proposed rule change. The Exchange anticipates

that the implementation date will be in the first half of 2021.

#### 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>8</sup> 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 regulating, clearing, settling, processing information with respect to, and 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. The Exchange believes that processing odd lot sized orders in the same manner as round and mixed lot sized orders would remove impediments to and perfect the mechanism of a free and open market because the same principle applies: an order of any size that has been displayed has priority at that price if an away Trading Center subsequently locks or crosses that price. In addition, the Exchange believes that processing odd lot orders the same as round-lot sized orders is not novel as it is consistent with the rules of other exchanges.<sup>9</sup>

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. In fact, the Exchange believes that the proposal may have a positive effect on competition because it is designed to conform how the Exchange processes odd lot orders to the functionality available on other exchanges. The Exchange believes that the proposed change would promote competition because fewer orders would need to be re-priced on the Exchange and therefore liquidity providers seeking for their orders to retain priority may route additional orders to the Exchange. Likewise, liquidity takers may be more likely to route orders to the Exchange if

<sup>3</sup> Exchange Rule 2610 provides that the unit of trading in stocks is one (1) share. 100 shares constitutes a "round lot," unless specified by the primary listing market to be fewer than 100 shares. Any amount less than a round lot shall constitute an "odd lot," and any amount greater than a round lot that is not a multiple of a round lot shall constitute a "mixed lot."

<sup>4</sup> The proposed rule change is substantially similar to a recent rule amendment by the New York Stock Exchange LLC ("NYSE"). See Securities Exchange Act Nos. 88362 (March 12, 2020), 85 FR 15538 (March 18, 2020) (SR-NYSE-2020-13); and 88793 (May 1, 2020), 85 FR 27259 (May 7, 2020) (SR-NYSE-2020-13) ("NYSE Approval Order"). See also NYSE Rule 7.38.

<sup>5</sup> See Exchange Rule 1901 defining the term "MIAX PEARL Equities Book".

<sup>6</sup> Like round and mixed lot sized orders, odd lot sized orders would be subject to the Exchange price sliding processes under Exchange Rule 2614(g).

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> See the NYSE Approval Order, *supra* note 5. See NYSE Rule 7.38. See also Nasdaq Rules 4703(b)(3) (defining the term "odd lot" as an order attribute) and 4702 (describing which order attributes are available for orders on Nasdaq, without any discussion of odd lot sized orders being priced differently than round-lot sized orders). See also BZX Rules 11.10 (defining the term "odd lot") and 11.9 (describing BZX Orders and Modifiers, without any discussion of odd lot sized orders being priced differently than round-lot sized orders).

they have greater determinism regarding the price at which their orders would be executed.

*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**

Because the foregoing 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 for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6)<sup>11</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-2020-28 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-2020-28. 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-2020-28, and should be submitted on or before January 4, 2021.

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

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2020-27201 Filed 12-10-20; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-90577; File No. SR-NASDAQ-2020-079]

**Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Relocate Its Equity and General Rules From Its Current Rulebook Into Its New Rulebook Shell**

December 7, 2020.

Pursuant to 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 November 23, 2020, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“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 relocate its equity and general rules from its current Rulebook into its new Rulebook shell.

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 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 this rule change is to relocate Nasdaq equity and general rules from the current Rulebook into the new Rulebook shell.<sup>3</sup> The Exchange also proposes a number of minor, non-substantive changes to the Rulebook shell as described below. The relocation and harmonization of these rules is part of the Exchange's continued effort to promote efficiency and conformity of its processes with those of its affiliated exchanges. The Exchange believes that the placement of these rules into their new location in the Rulebook shell will

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

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

<sup>3</sup> Previously, the Exchange filed to relocate other rules within its Rulebook. See Securities Exchange Act Release No. 87778 (December 17, 2019), 84 FR 70590 (December 23, 2019) (SR-NASDAQ-2019-098).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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.

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