

19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>11</sup> normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>12</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. FINRA has asked the Commission to waive the 30-day operative delay so that the proposal may become operative upon filing. Extending the pilot for an additional six months will allow the uninterrupted operation of the existing pilot to halt trading across the U.S. markets while the Commission considers whether to approve the pilot on a permanent basis. The extension simply maintains the status quo. Therefore, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission hereby designates the proposed rule change to be operative upon filing.<sup>13</sup>

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-FINRA-2019-010 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-FINRA-2019-010. 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 FINRA. 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-FINRA-2019-010, and should be submitted on or before May 3, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85541; File No. SR-PEARL-2019-12]

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

April 8, 2019.

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 March 27, 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 certain non-transaction fees applicable to participants and new members trading options on and/or using services provided by MIAx PEARL.

MIAx PEARL commenced operations as a national securities exchange registered under Section 6 of the Act<sup>3</sup> on February 6, 2017.<sup>4</sup> The Exchange adopted its transaction fees and certain of its non-transaction fees in its filing SR-PEARL-2017-10.<sup>5</sup>

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on April 1, 2019.

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.

<sup>3</sup> 15 U.S.C. 78f.

<sup>4</sup> 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).

<sup>5</sup> See Securities Exchange Act Release No. 80061 (February 17, 2017), 82 FR 11676 (February 24, 2017) (SR-PEARL-2017-10).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> *Id.*

<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>13</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>14</sup> 17 CFR 200.30-3(a)(12).

## 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 establish certain non-transaction fees applicable to certain market participants and new members trading options on and/or using certain services provided by the Exchange. The Exchange introduced the structure of certain non-transaction fees in its filing SR-PEARL-2017-10 (without proposing actual fee amounts), but also explicitly waived the assessment of any such fees for the period of time which the Exchange defined as the "Waiver Period."<sup>6</sup> The Exchange now proposes to adopt certain non-transaction fees as described below, and thereby terminate the Waiver Period applicable to such non-transaction fees. In general, the Exchange proposes to amend the Fee Schedule to establish one-time application for membership fees for MIAX PEARL Members;<sup>7</sup> Application Programming Interface ("API") Testing and Certification fees; and MIAX PEARL Member Participant Identifier ("MPID")<sup>8</sup> fees.

<sup>6</sup> "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.

<sup>7</sup> "Member" means an individual or organization that is registered with the Exchange pursuant to Chapter II of the Exchange Rules for purposes of trading on the Exchange as an "Electronic Exchange Member" or "Market Maker." Members are deemed "members" under the Exchange Act. See Exchange Rule 100.

<sup>8</sup> An MPID is a code used in the MIAX PEARL system to identify the participant to MIAX PEARL and to the participant's Clearing Member respecting trades executed on MIAX PEARL. Participants may use more than one MPID.

The Exchange also proposes to amend its Fee Schedule to remove the text and application of the New Member Non-Transaction Fee Waiver.<sup>9</sup> The Exchange adopted the three month New Member Non-Transaction Fee Waiver in its filing SR-PEARL-2018-07.<sup>10</sup>

The Exchange now proposes to remove the New Member Non-Transaction Fee Waiver as described below, and thereby terminate the New Member Non-Transaction Fee Waiver as it applies to all relevant fees, including the Monthly Trading Permit fee; Port fees; and MIAX PEARL Top of Market ("ToM") and MIAX PEARL Liquidity Feed ("PLF") market data fees. The Exchange also proposes to amend the Definitions section of the Fee Schedule to delete the definitions of "New Member Non-Transaction Fee Waiver" and "Waiver Period" because those definitions are no longer applicable in accordance with this proposal to remove the Waiver Period for all remaining waived non-transaction fees, as described below, including the three month fee waiver applicable to certain non-transaction fees for new Members of the Exchange.

#### A. Application for MIAX PEARL Membership

A one-time application fee based upon the applicant's status as either an Electronic Exchange Member<sup>11</sup> ("EEM") or as a Market Maker<sup>12</sup> will be assessed by MIAX PEARL. Applicants for MIAX PEARL Membership as an EEM will be assessed a one-time application fee of \$500. Applicants for MIAX PEARL

<sup>9</sup> "New Member Non-Transaction Fee Waiver" means the waiver of certain non-transaction fees, as explicitly set forth in specific sections of the Fee Schedule, for a new Member of the Exchange, for the waiver period. For purposes of this definition, the waiver period consists of the calendar month the new Member is credentialed to use the System in the production environment following approval as a new Member of the Exchange and the two (2) subsequent calendar months thereafter. For purposes of this definition, a new Member shall mean any Member who has not previously been approved as a Member of the Exchange. See the Definitions Section of the Fee Schedule.

<sup>10</sup> See Securities Exchange Act Release No. 82867 (March 13, 2018), 83 FR 12044 (March 19, 2018) (SR-PEARL-2018-07).

<sup>11</sup> "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.

<sup>12</sup> "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.

Membership as a Market Maker will be assessed a one-time application fee of \$1,500. The difference in the fee charged to EEMs and Market Makers reflects the additional review and processing effort needed for Market Maker applications. MIAX PEARL's one-time 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)<sup>13</sup> 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).<sup>14</sup> Below is the table for the proposed one-time fee for membership application for MIAX PEARL:

Type of membership	Application fee
Electronic Exchange Member	\$500.00
Market Maker .....	1,500.00

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.

#### B. Member API Testing and Certification Fee

MIAX PEARL will assess an API Testing and Certification fee on Members. An API makes it possible for Member software to communicate with MIAX PEARL software applications, and is subject to Member testing with, and certification by, MIAX PEARL. API testing and certification includes, for EEMs, testing all available order types, new order entry, order management, order throughput and mass order cancellation. For Market Makers, API testing and certification also includes testing of all available quote types, quote throughput, quote management and cancellation, Aggregate Risk Manager settings and triggers, and confirmation of quotes within the trading engines.

The API Testing and Certification fees for Members are based upon the type of interface that the Member has been credentialed to use. MIAX PEARL will assess an API testing and certification fee for Members (i) initially per API for

<sup>13</sup> See Cboe Fees Schedule, p. 12, Cboe Trading Permit Holder Application Fees.

<sup>14</sup> See Nasdaq ISE Pricing Schedule, IX(A).

FIX,<sup>15</sup> MEO,<sup>16</sup> FXD<sup>17</sup> and CTD<sup>18</sup> in the month the Member has been credentialed to use one or more ports in the production environment for the tested API, and (ii) each time a Member initiates a change to its system that requires testing and certification. API Testing and Certification fees will not be assessed in situations where the Exchange initiates a mandatory change to the Exchange's system that requires testing and certification.

Any Member can select any type of interface (FIX Interface, MEO Interface, FXD Interface, and/or the CTD Port) to test and certify. Each Member who uses the FIX Interface to connect to the System<sup>19</sup> will be assessed an API Testing and Certification fee of \$1,000. Each Member who uses the MEO Interface to connect to the System will be assessed an API Testing and Certification fee of \$1,500. Each Member who uses the FXD Interface to connect to the system will be assessed an API Testing and Certification fee of \$500. Each Member who uses the CTD Port to connect to the system will be assessed an API Testing and Certification fee of \$500.

Below is the proposed fee table for API Testing and Certification fees for Members:

Type of interface	API testing and certification fee
FIX .....	\$1,000.00

<sup>15</sup> "FIX Interface" means the Financial Information Exchange interface for certain order types as set forth in Exchange Rule 516. See Exchange Rule 100. See the Definitions Section of the Fee Schedule.

<sup>16</sup> "MEO Interface" means a binary order interface for certain order types as set forth in Rule 516 into the MIAx PEARL System. See Exchange Rule 100. See the Definitions Section of the Fee Schedule.

<sup>17</sup> "FXD Interface" or "FIX Drop Copy Port" means a messaging interface that provides a copy of real-time trade execution, trade correction and trade cancellation information to FIX Drop Copy Port users who subscribe to the service. FXD Port users are those users who are designated by an EEM to receive the information and the information is restricted for use by the EEM only. See the Definitions Section of the Fee Schedule.

<sup>18</sup> "CTD Port" or "Clearing Trade Drop Port" provides an Exchange Member with a real-time clearing trade updates. The updates include the Member's clearing trade messages on a low latency, real-time basis. The trade messages are routed to a Member's connection containing certain information. The information includes, among other things, the following: (i) Trade date and time; (ii) symbol information; (iii) trade price/size information; (iv) Member type (for example, and without limitation, Market Maker, Electronic Exchange Member, Broker-Dealer); and (v) Exchange MPID for each side of the transaction, including Clearing Member MPID.

<sup>19</sup> The term "System" means the automated trading system used by the Exchange for the trading of securities. See Exchange Rule 100.

Type of interface	API testing and certification fee
MEO .....	1,500.00
FXD .....	500.00
CTD .....	500.00

API Testing and Certification Fees will be assessed (i) initially per API for FIX, MEO, FXD and CTD in the month the Member has been credentialed to use one or more ports in the production environment for the tested API, and (ii) each time a Member initiates a change to its system that requires testing and certification. API Testing and Certification Fees will not be assessed in situations where the Exchange initiates a mandatory change to the Exchange's system that requires testing and certification.

#### C. Non-Member API Testing and Certification Fee

MIAx PEARL will assess an API Testing and Certification fee for Third Party Vendors<sup>20</sup>, Service Bureaus<sup>21</sup> and other non-Members (i) initially per API for FIX, MEO, FXD, and CTD in the month the non-Member has been credentialed to use one or more ports in the production environment for the tested API, and (ii) each time a Third Party Vendor, Service Bureau, or other non-Member initiates a change to its system that requires testing and certification. API Testing and Certification fees will not be assessed in situations where the Exchange initiates a mandatory change to the Exchange's system that requires testing and certification.

The MIAx PEARL API Testing and Certification fees for non-Members are based upon the type of interface used by the non-Member to connect to the Exchange—the FIX Interface, the MEO Interface, the FXD Interface, and/or the CTD Port. Any non-Member can select any type of interface (FIX Interface, MEO Interface, FXD Interface, and/or the CTD Port) to test and certify. As with Members, an API makes it possible for third party vendors' and Service Bureaus' software to communicate with MIAx PEARL software applications, and is subject to testing with, and certification by, MIAx PEARL. The

<sup>20</sup> Third party vendors are subscribers of MIAx's market and other data feeds, which they in turn use for redistribution purposes. Third party vendors do not provide connectivity and therefore are not subject to Network testing and certification. See the Definitions Section of the Fee Schedule.

<sup>21</sup> "Service Bureau" means a technology provider that offers and supplies technology and technology services to a trading firm that does not have its own proprietary system. See the Definitions Section of the Fee Schedule.

higher fee charged to non-Members reflects the greater amount of time spent by MIAx PEARL employees testing and certifying non-Members. It has been MIAx PEARL's experience that Member testing takes less time than non-Member testing because Members have more experience testing these systems with exchanges; generally fewer questions and issues arise during the testing and certification process. Also, because Third Party Vendors and Service Bureaus are redistributing data and reselling services to other Members and market participants, the number and types of scenarios that need to be tested are more numerous and complex than those tested and certified for a single Member.

Each non-Member who uses the FIX Interface to connect to the System will be assessed an API Testing and Certification fee of \$1,200. Each non-Member who uses the MEO Interface to connect to the System will be assessed an API Testing and Certification fee of \$2,000. Each non-Member who uses the FXD Interface to connect to the system will be assessed an API Testing and Certification fee of \$600. Each non-Member who uses the CTD Port to connect to the system will be assessed an API Testing and Certification fee of \$600.

Below is the proposed fee table for API Testing and Certification fees for non-Members:

Type of interface	API testing and certification fee
FIX .....	\$1,200.00
MEO .....	2,000.00
FXD .....	600.00
CTD .....	600.00

API Testing and Certification Fees for Third Party Vendors, Service Bureaus and other non-Members will be assessed (i) initially per API for FIX, MEO, FXD, and CTD in the month the non-Member has been credentialed to use one or more ports in the production environment for the tested API, and (ii) each time a Third Party Vendor, Service Bureau, or other non-Member initiates a change to its system that requires testing and certification. API Testing and Certification Fees will not be assessed in situations where the Exchange initiates a mandatory change to the Exchange's system that requires testing and certification.

#### D. MPID Fees

MIAx PEARL will assess monthly MPID fees on Members based upon type of MPID. MIAx PEARL assesses MPID

fees to cover the administrative costs it incurs in assigning and managing these identifiers for each Member. Members will be assessed a monthly MPID fee of \$125 for each FIX MPID. Members will be assessed a monthly MPID fee of \$125 for each MEO MPID. MPIDs allow the Exchange to provide additional services to its Members, including reporting, monitoring and risk protection services, down at the MPID level. MPIDs provide the Members the ability to segment their business operations in a manner that can be tailored to their business needs, as well as receive certain additional administrative and operational services provided by the Exchange.

The Exchange also proposes to introduce a cap on the amount of MPID fees that are assessed by the Exchange to a Member of \$500 per month, regardless of the actual number of EEM or MEO MPIDs assigned to such Member. The Exchange believes that establishing a monthly cap on MPID fees will give Members greater flexibility to accommodate their varying business models and customer configurations, as many Members often request multiple MPIDs from the Exchange, and the Exchange does not want MPID costs to serve as a barrier for requesting multiple MPIDs. The Exchange notes that this fee cap is similar to the MPID fee cap assessed by the Exchange's affiliate, MIAX Options.<sup>22</sup>

Below is the proposed MPID fee table:

Type of MPID	Monthly MPID fees
FIX MPID .....	\$125.00
MEO MPID .....	125.00

MPID fees are capped at \$500.00 per month per Member.

#### E. New Member Non-Transaction Fee Waiver

The Exchange proposes to remove the New Member Non-Transaction Fee Waiver from the Fee Schedule. The New Member Non-Transaction Fee Waiver waived the assessment of a fee for a Trading Permit, Port, ToM or PLF market data feed for a new Member of the Exchange for the first calendar month during which the new Member was approved as a Member and was credentialed to use the System in the production environment, and for the two (2) subsequent calendar months thereafter.<sup>23</sup>

<sup>22</sup> See Securities Exchange Act Release No. 82823 (March 7, 2018), 83 FR 10935 (March 13, 2018) (SR-MIAX-2018-09).

<sup>23</sup> See the Definitions Section of the Fee Schedule.

The Exchange initially waived certain non-transaction fees for new Members in order to attract new business and encourage Members to use the Exchange. The Exchange now believes that the New Member Non-Transaction Fee Waiver is no longer necessary since the MIAX PEARL market is established and MIAX PEARL no longer needs to rely on such waivers to attract market participants.

The Exchange notes that any Member who began receiving the New Member Non-Transaction Fee Waiver prior to the filing of this proposal, will continue to receive that benefit for the first calendar month during which they were approved as a Member and were credentialed to use the System in the production environment, and for the two (2) subsequent calendar months thereafter.

The Exchange has issued a Regulatory Circular announcing the establishment of the aforementioned fees that were subject to the Waiver Period at least 15 days prior to the termination of the Waiver Period and effective date of the applicable fee.

#### 2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act<sup>24</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>25</sup> 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 eliminate the waiver of the non-transaction fees described above is reasonable because 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 changes are equitable and not unfairly discriminatory because the elimination

<sup>24</sup> 15 U.S.C. 78f(b).

<sup>25</sup> 15 U.S.C. 78f(b)(4) and (5).

of the non-transaction fees will uniformly apply to all Exchange participants based on market participant type.

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 and generally lower than application fees in place at other options exchanges,<sup>26</sup> and are designed to recover costs associated with the 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 work involved in processing a Market Maker's application.

The Exchange believes it is reasonable, equitable, and not unfairly discriminatory to begin to assess API Testing and Certification fees for both Members and non-Members. The Exchange believes the proposed API Testing and Certification fees are a reasonable allocation of its costs and expenses among its Members and non-Members using its facilities since it is recovering the costs associated with providing such infrastructure testing and certification services.

MIAX PEARL believes it is reasonable, equitable and not unfairly discriminatory to assess different API Testing and Certification fees to Members and non-Members. The higher fee charged to non-Members reflects the greater amount of time spent by MIAX PEARL employees testing and certifying non-Members. It has been MIAX PEARL's experience that Member testing takes less time than non-Member testing because Members have more experience testing these systems with exchanges; generally fewer questions and issues arise during the testing and certification process. Also, with respect to API testing and certification, because Third Party Vendors and Service Bureaus are redistributing data and reselling services to other Members and market participants the number and types of scenarios that need to be tested are more numerous and complex than those tested and certified for Members.

The Exchange believes its fees for MPIDs are reasonable, equitable and not unfairly discriminatory in that they apply to all Members assigned MPIDs equally and allow the Exchange to recover administrative and operational costs in assigning and maintaining such services. In particular, MPIDs provide Members the ability to segment their

<sup>26</sup> See *supra* notes 13 and 14.

business operations in a manner that can be tailored to their business needs, as well as receive certain additional administrative and operational services provided by the Exchange. The Exchange also believes that the proposed amendment to establish a fee cap for Members on MPID fees is reasonable, equitable, and not unfairly discriminatory. The proposal to cap the total amount of MPID fees that can be assessed upon a Member to a maximum of \$500 per month is designed to promote just and equitable principles of trade by encouraging Members to configure their MPID assignments with greater granularity and for MPID costs to not serve as a barrier for requesting multiple MPIDs. Because any Member is eligible to take advantage of the fee cap, the Exchange believes the fee cap is fair and equitable and not unreasonably discriminatory because it applies equally to all Members, and access to such fee cap is offered on terms that are not unfairly discriminatory.

The Exchange believes that the proposed amendment to remove the New Member Non-Transaction Fee Waiver is reasonable, equitable, and not unfairly discriminatory because the removal of the New Member Non-Transaction Fee Waiver applies equally to all new Members of the Exchange. The Exchange initially waived certain non-transaction fees for new Members in order to attract new business and encourage Members to join the Exchange. The Exchange believes that the New Member Non-Transaction Fee Waiver is no longer necessary since the MIAX PEARL market is established and MIAX PEARL no longer relies on such waivers to attract market participants. Further, the proposed rule change will not apply to any new Member who began receiving the New Member Non-Transaction Fee Waiver prior to the filing of this proposal and will continue to receive that benefit for the first calendar month during which they were approved as a Member and were credentialed to use the System in the production environment, and for the two (2) subsequent calendar months thereafter.

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 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. Unilateral action by MIAX PEARL in the assessment of certain non-transaction fees for services provided to its Members and others using its facilities will not have an impact on competition. As a more recent entrant in the already highly competitive environment for equity options 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 non-transaction fee levels, as described herein, are comparable to fee levels charged by other options exchanges for the same or similar services, including those fees assessed by its affiliate, MIAX Options.

Further, the Exchange believes that the proposed rule change will promote transparency by making it clear to Members and non-Members the applicable fees that MIAX PEARL will assess for application for membership to MIAX PEARL, API testing and certification, and MPID fees, as well as the cap on MPID fees for EEMs. This will permit Members and non-Members to more accurately anticipate and account for non-transactional costs, which promotes consistency.

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 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,<sup>27</sup> and Rule 19b-4(f)(2)<sup>28</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-2019-12 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-2019-12. 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

<sup>27</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>28</sup> 17 CFR 240.19b-4(f)(2).

submit only information that you wish to make available publicly. All submissions should refer to File Number SR-PEARL-2019-12 and should be submitted on or before May 3, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>29</sup>

**Jill M. Peterson,**  
Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85551; File No. SR-MSRB-2019-07]

### Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of a Proposed Rule Change To Amend Rules G-11 and G-32 and Form G-32 Regarding a Collection of Data Elements Provided in Electronic Format to the EMMA Dataport System in Connection With Primary Offerings

April 8, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Exchange Act” or “Act”) <sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 2, 2019 the Municipal Securities Rulemaking Board (the “MSRB” or “Board”) filed with the Securities and Exchange Commission (the “SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. 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 MSRB filed with the Commission a proposed rule change to amend MSRB Rule G-11, on primary offering practices, MSRB Rule G-32, on disclosures in connection with primary offerings and Form G-32, regarding a collection of data elements provided in electronic format to the Electronic Municipal Market Access Dataport (the “EMMA Dataport”) <sup>3</sup> system in connection with primary offerings (the

“proposed rule change”). The proposed rule change seeks to update and enhance the general practices undertaken by underwriters and others, as applicable, in a primary offering of municipal securities.

Following the effectiveness of the proposed rule change, assuming all amendments are approved, the MSRB will publish one or more regulatory notices within 180 days of effectiveness, and such notices shall specify the compliance dates for the respective rule changes, which in any case shall be not less than 90 days nor more than one year following the date of the notice establishing each such compliance date. The MSRB will also make both amended Form G-32 as well as the updated EMMA Dataport Manual for Primary Market Submissions and the Specifications for Primary Market Submissions Service document <sup>4</sup> available to underwriters in advance of relevant compliance date(s) to aid them in completing the amended form. The MSRB will announce the availability of amended Form G-32 and the updated manual and specification document by publishing a regulatory notice at a later date.

The text of the proposed rule change is available on the MSRB’s website at [www.msrb.org/Rules-and-Interpretations/SEC-Filings/2019-Filings.aspx](http://www.msrb.org/Rules-and-Interpretations/SEC-Filings/2019-Filings.aspx), at the MSRB’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 MSRB 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 MSRB has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

<sup>4</sup> The EMMA Dataport Manual for Primary Market Submissions describes the requirements of MSRB Rule G-32 for underwriters to submit primary offering disclosure documents and information to EMMA and gives instructions for making such submissions. Rule G-32 requires that such submissions be made as set forth in the EMMA Dataport Manual.

The Specifications for Primary Market Submissions Service document provides instructions for making continuous submissions of multiple offerings of securities to the EMMA Dataport and contains figures for making submissions to the EMMA Dataport through a computer-to-computer interface.

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

##### 1. Purpose

##### Background

##### Rule G-11—Primary Offering Practices

Rule G-11 establishes terms and conditions for sales by brokers, dealers and municipal securities dealers (together, “dealers”) of new issues of municipal securities in primary offerings, including provisions on communications relating to the syndicate and designations and allocations of securities. The rule was first adopted by the MSRB in 1978, and was designed to

increase the scope of information available to syndicate managers and members, other municipal securities professionals and the investing public, in connection with the distribution of new issues of municipal securities without impinging upon the right of syndicates to establish their own procedures for the allocation of securities and other matters.<sup>5</sup>

The MSRB noted that, in adopting Rule G-11, the Board generally chose to require the disclosure of practices of syndicates rather than dictate what those practices must be.<sup>6</sup>

Because of the evolving nature of the municipal securities market, Rule G-11 has been amended several times over the years. More recently, as part of a retrospective rule review, the MSRB considered how Rule G-11 applies in the current market and whether amendments may be needed to address changing practices in primary offerings of municipal securities. In its review, the MSRB found there were opportunities to enhance regulatory transparency, equalize information dissemination in primary offerings, reinforce aspects of Rule G-11 to selling group members regarding their existing obligations under the rule and align the mandatory time frames for certain payments to syndicate members in order to reduce credit risk.

More specifically, the proposed amendments to Rule G-11 would enhance the information dissemination requirements of Rule G-11 to require the senior syndicate manager to disseminate free-to-trade information to all syndicate and selling group members at the same time, thus eliminating any potential for unfair advantages in secondary market trading that could result from having advance notice that

<sup>5</sup> MSRB Reports, Vol. 5, No. 6 (Nov. 1985).

<sup>6</sup> See, e.g., MSRB Reports, Vol. 2, No. 5 (Jul. 1982).

<sup>29</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> EMMA® is a registered trademark of the MSRB. The EMMA Dataport is the submission portal through which information is provided for display to the public on EMMA.