

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-80592; File No. SR-PEARL-2017-19]

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

May 4, 2017.

Pursuant to the provisions of 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 April 26, 2017, 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”).

The text of the proposed rule change is available on the Exchange’s Web site 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 Add/Remove Tiered Rebates/Fees set forth in Section 1(a) of the Fee Schedule that apply to MIAX PEARL Market Makers<sup>3</sup> to (i) increase the “Maker” rebate in Tier 3 for transactions of options in Penny classes (as defined below), and (ii) add a new, alternative Volume Criteria to Tier 3 based upon the total monthly volume executed by a Market Maker solely in SPY options on MIAX PEARL, expressed as a percentage of total consolidated national volume in SPY options. The Exchange also proposes to make a minor, non-substantive technical correction to a definition contained in the Definitions section of the Fee Schedule, as described below.

The Exchange currently assesses transaction rebates and fees to all market participants which are based upon the total monthly volume executed by the Member<sup>4</sup> on MIAX PEARL in the relevant, respective origin type (not including Excluded Contracts)<sup>5</sup> expressed as a percentage of TCV.<sup>6</sup> In addition, the per contract

<sup>3</sup> “Market Maker” means a Member registered with the Exchange for the purpose of making markets in options contracts traded on the Exchange. See the Definitions Section of the Fee Schedule and Exchange Rule 100.

<sup>4</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 the Definitions Section of the Fee Schedule and Exchange Rule 100.

<sup>5</sup> “Excluded Contracts” means any contracts routed to an away market for execution. See the Definitions Section of the Fee Schedule.

<sup>6</sup> “TCV” means total consolidated volume calculated as the total national volume in those classes listed on MIAX PEARL for the month for which the fees apply, excluding consolidated volume executed during the period time in which the Exchange experiences an “Exchange System Disruption” (solely in the option classes of the affected Matching Engine (as defined below)). The term Exchange System Disruption, which is defined in the Definitions section of the Fee Schedule, means an outage of a Matching Engine or collective Matching Engines for a period of two consecutive hours or more, during trading hours. The term Matching Engine, which is also defined in the Definitions section of the Fee Schedule, is a part of the MIAX PEARL electronic system that processes options orders and trades on a symbol-by-symbol basis. Some Matching Engines will process option classes with multiple root symbols, and other Matching Engines may be dedicated to one single option root symbol (for example, options on SPY

transaction rebates and fees are applied retroactively to all eligible volume for that origin type once the respective threshold tier (“Tier”) has been reached by the Member. The Exchange aggregates the volume of Members and their Affiliates.<sup>7</sup> Members that place resting liquidity, *i.e.*, orders resting on the book of the MIAX PEARL System,<sup>8</sup> are paid the specified “maker” rebate (each a “Maker”), and Members that execute against resting liquidity are assessed the specified “taker” fee (each a “Taker”). For opening transactions and ABBO uncrossing transactions, per contract transaction rebates and fees are waived for all market participants. Finally, Members are assessed lower transaction fees and receive lower rebates for order executions in standard option classes in the Penny Pilot Program<sup>9</sup> (“Penny classes”) than for order executions in standard option classes which are not in the Penny Pilot Program (“Non-Penny classes”), where Members are assessed higher transaction fees and receive higher rebates.

Transaction rebates and fees applicable to all Market Makers are currently assessed according to the following table:

may be processed by one single Matching Engine that is dedicated only to SPY). A particular root symbol may only be assigned to a single designated Matching Engine. A particular root symbol may not be assigned to multiple Matching Engines. The Exchange believes that it is reasonable and appropriate to select two consecutive hours as the amount of time necessary to constitute an Exchange System Disruption, as two hours equates to approximately 1.4% of available trading time per month. The Exchange notes that the term “Exchange System Disruption” and its meaning have no applicability outside of the Fee Schedule, as it is used solely for purposes of calculating volume for the threshold tiers in the Fee Schedule. See the Definitions Section of the Fee Schedule.

<sup>7</sup> “Affiliate” means (i) an affiliate of a Member of at least 75% common ownership between the firms as reflected on each firm’s Form BD, Schedule A, or (ii) the Appointed Market Maker of an Appointed EEM (or, conversely, the Appointed EEM of an Appointed Market Maker). An “Appointed Market Maker” is a MIAX PEARL Market Maker (who does not otherwise have a corporate affiliation based upon common ownership with an EEM) that has been appointed by an EEM and an “Appointed EEM” is an EEM (who does not otherwise have a corporate affiliation based upon common ownership with a MIAX PEARL Market Maker) that has been appointed by a MIAX PEARL Market Maker, pursuant to the process described in the Fee Schedule. See the Definitions Section of the Fee Schedule.

<sup>8</sup> The term “System” means the automated trading system used by the Exchange for the trading of securities. See Exchange Rule 100.

<sup>9</sup> See Securities Exchange Act Release No. 79778 (January 12, 2017), 82 FR 6662 (January 19, 2017) (SR-PEARL-2016-01).

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

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

Origin	Tier	Volume criteria	Per contract rebates/fees for Penny classes		Per contract rebates/fees for Non-Penny classes	
			Maker	Taker	Maker	Taker
All MIAX .....	1	0.00%–0.10% .....	(\$0.25)	\$0.50	(\$0.30)	\$1.05
PEARL .....	2	Above 0.10%–0.50% .....	(0.40)	0.48	(0.60)	1.03
Market .....	3	Above 0.50%–0.75% .....	(0.45)	0.47	(0.65)	1.02
Makers .....	4	Above 0.75% .....	(0.48)	0.47	(0.70)	1.02

The Exchange proposes to increase the “Maker” rebate amount in Tier 3 for Penny classes from (\$0.45) to (\$0.47). The purpose of increasing the amount of the rebate is to provide a greater incentive to Market Makers to reach Tier 3, thereby increasing the potential for executing more volume at the Exchange and consequently receiving a higher rebate. The Exchange believes that increased Maker volume by Market Makers in Penny classes will attract more liquidity to the Exchange, which in turn will benefit all market participants.

The Exchange also proposes to add a new, alternative Volume Criteria to Tier 3 based upon the total monthly volume executed by a Market Maker solely in SPY options on MIAX PEARL, expressed as a percentage of total consolidated national volume in SPY options. Pursuant to this alternative Volume Criteria, a Market Maker can now reach the Tier 3 threshold if the Market Maker’s total executed monthly volume in SPY options on MIAX PEARL is above 2.0% of total consolidated national monthly volume in SPY options. To be clear, volume that is from resting liquidity (Maker) and taking liquidity (Taker) in SPY options are counted towards this alternative Volume Criteria. Accordingly, a Market Maker could now qualify for Tier 3 rebates and fees which will then be applicable to all volume executed by the Market Maker on MIAX PEARL. The two Volume Criteria available for Tier 3 are now based upon either: (a) The total monthly volume executed by the Market Maker *in all options classes on MIAX PEARL*, not including Excluded Contracts, (as the numerator), expressed as a percentage of (divided by) TCV (as the denominator); or (b) the total monthly volume executed by the Market Maker *solely in SPY options on MIAX PEARL*, not including Excluded Contracts, (as the numerator), expressed as a percentage of (divided by) SPY TCV (as the denominator). Once either Volume Criteria threshold in Tier 3 is reached by the Market Maker, the Tier 3 per contract rebates and fees will apply to all volume *in all options classes* executed by that Market Maker on MIAX PEARL.

In addition to modifying the MIAX PEARL Market Maker table to insert the new, alternative Volume Criteria threshold in Tier 3, in order to provide a clear explanation of the requirements for achieving that alternative Volume Criteria threshold in Tier 3, the Exchange is proposing to (i) amend the explanatory paragraph beneath the tables in Section 1(a) of the Fee Schedule, and (ii) add a new definition of “SPY TCV” to the Definitions Section of the Fee Schedule. The amended explanatory paragraph will clarify that (except as otherwise set forth in the Fee Schedule) the existing Volume Criteria threshold measures volume in all options classes on MIAX PEARL, and that the new, alternative Volume Criteria threshold in Tier 3 for Market Makers measures volume solely in SPY options on MIAX PEARL. The new definition of SPY TCV in the Definitions Section shall provide the following: “SPY TCV” means total consolidated volume in SPY calculated as the total national volume in SPY for the month for which the fees apply, excluding consolidated volume executed during the period of time in which the Exchange experiences an Exchange System Disruption (solely in SPY options).

The Exchange believes that the proposed alternative Volume Criteria threshold in Tier 3 for Market Makers will provide another opportunity for those Market Makers that concentrate their trading activity in limited options classes such as SPY options to reach a higher tier. The Exchange believes that creating this alternative Volume Criteria will extend the Tier 3 fee incentives to Market Makers that concentrate their trading activity by sending significant volume in SPY options as compared to other Market Makers that do trade in the broad range of products listed on the Exchange.

Finally, the Exchange is proposing to make a minor, non-substantive technical correction to the definition of “TCV” to insert the word “of” in between the words “period” and “time.” This word was inadvertently left out of the sentence when the definition of “TCV”

was initially adopted, on February 6, 2017.<sup>10</sup>

The proposed rule change is scheduled to become operative May 1, 2017.

## 2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act<sup>11</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act,<sup>12</sup> in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities, and 6(b)(5) of the Act,<sup>13</sup> in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The proposed Maker rebate increase in Penny classes applicable to Market Makers that reach the Tier 3 threshold is reasonable, equitable and not unfairly discriminatory because all similarly situated Market Makers are subject to the same tiered rebates and fees and access to the Exchange is offered on terms that are not unfairly discriminatory. The Exchange initially set its Maker rebates at the various volume levels based upon business determinations and an analysis of current Maker rebates and volume levels at other exchanges. For competitive and business reasons, the Exchange believes that a higher rebate to Market Makers that add liquidity in Penny classes in a higher tier will encourage Market Makers to execute more volume as a Maker in Penny classes. The Exchange believes for these reasons that offering a higher Maker rebate for transactions in Penny classes in Tier 3 for Market Makers is equitable, reasonable and not

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

<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(4).

<sup>13</sup> 15 U.S.C. 78f(b)(1) and (b)(5).

unfairly discriminatory, and thus consistent with the Act.

Furthermore, the proposed increase to the Maker rebate amount in Penny classes for Market Makers that reach Tier 3 promotes just and equitable principles of trade, fosters cooperation and coordination with persons engaged in facilitating transactions in securities, and protects investors and the public interest because the proposed increase in the rebate amount encourages Market Makers to send more orders to the Exchange which add liquidity in order to achieve higher thresholds and resulting higher rebates. To the extent that order flow which adds liquidity in Penny classes is increased by the proposal, market participants will increasingly compete for the opportunity to trade on the Exchange, including sending more orders to reach higher tiers. The resulting increased volume and liquidity will benefit all Exchange participants by providing more trading opportunities and tighter spreads.

The Exchange's proposal to adopt the new, alternative Volume Criteria for Tier 3 based on SPY volume executed on the Exchange is reasonable, equitable, and not unfairly discriminatory, as it is a form of pricing based upon trading activity in a select symbol, which is a common practice on many U.S. options exchanges as a means to incentivize order flow to be sent to an exchange for execution in actively traded options classes. The Exchange's affiliate, Miami International Securities Exchange, LLC ("MIAX Options"), offers enhanced pricing for transactions in options underlying certain select symbols.<sup>14</sup> SPY options are the most actively traded class. Other options exchanges' fee schedules distinguish by symbol and specifically assess different fees and rebates for transactions in select symbols and some exclusively for transactions in SPY options for the same market participants.<sup>15</sup>

The Exchange is offering an alternative Tier 3 Volume Criteria threshold based on SPY options volume in Tier 3 because, as previously mentioned, SPY options are the most actively traded options in the industry, and therefore the Exchange believes that incentivizing Market Makers that concentrate their trading activity in SPY

options will consequently increase order flow sent to the Exchange, which will benefit all market participants through increased liquidity, tighter markets and order interaction.

The Exchange believes that the proposed non-substantive, technical correction will promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system because it will improve the readability of the rules. The proposed change does not alter the application of the rule. As such, the proposed change would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system. In particular, the Exchange believes that the proposed rule change will provide greater clarity to Members and the public regarding the Exchange's Rules, and it is in the public interest for rules to be accurate and concise so as to eliminate the potential for confusion.

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

MIAX PEARL does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed Maker rebate increase is intended to encourage the posting of liquidity. The proposed rule change should enable the Exchange to attract and compete for order flow with other exchanges and the greater rebate for adding liquidity will encourage Market Makers to submit more order flow that adds liquidity, not removes it. The Exchange also believes that paying greater rebates may create competition among market participants. However, this competition does not create an undue burden on competition but rather offers all market participants the opportunity to receive the benefit of the enhanced pricing.

Further, the Exchange believes that the proposed alternative Volume Criteria threshold in Tier 3 based on SPY options volume applicable to Market Makers provides greater incentives to those Market Makers that concentrate their trading activity in SPY options to send additional SPY orders and creates additional opportunity for additional liquidity to the market.

The Exchange does not believe that the proposed rule change to make a technical correction to its rules will impose any burden on competition not necessary or appropriate in furtherance

of the purposes of the Act. The proposed rule change is not designed to address any competitive issues but rather is designed to add additional clarity and to remedy a minor, non-substantive issue in the text of a definition in the Fee Schedule.

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 rebates and fees to remain competitive with other exchanges and to attract order flow. The Exchange believes that the proposed rule changes reflect this competitive environment because they modify the Exchange's fees in a manner that encourages market participants to provide liquidity and to send 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>16</sup> and Rule 19b-4(f)(2)<sup>17</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/comment/sro.shtml>); or

<sup>16</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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

<sup>14</sup> See MIAX Options Fee Schedule, Section (1)(a)(iii).

<sup>15</sup> See Chicago Board Options Exchange Incorporated ("CBOE") Fees Schedule; see also NASDAQ PHLX LLC ("PHLX") Pricing Schedule, Chapter B, Section I; see further International Securities Exchange LLC ("ISE") Fee Schedule, Sections I and II.

• Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR–PEARL–2017–19 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–2017–19. 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 Web site (<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 Web site 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PEARL–2017–19 and should be submitted on or before May 31, 2017.

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

**Eduardo A. Aleman,**

*Assistant Secretary.*

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**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80594; File No. SR–BX–2017–021]

### Self-Regulatory Organizations; NASDAQ BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 4703 (Order Attributes)

May 4, 2017.

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 April 21, 2017, NASDAQ BX, Inc. (“BX” 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 Rule 4703 (Order Attributes) to specify the behavior of Orders with Midpoint Pegging after initial entry and posting to the Exchange Book when the market is crossed, or when there is no best bid and/or offer. The Exchange also proposes to change a reference to cancelling or rejecting orders in Rule 4703.

The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaqbx.cchwallstreet.com/>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the 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

BX proposes to amend Rule 4703 (Order Attributes) to specify the behavior of Orders with Midpoint Pegging that are cancelled or rejected when the market is crossed, or when there is no best bid and/or offer after initial entry and posting to the Exchange Book. BX also proposes to change a reference to cancelling or rejecting orders in Rule 4703.

Rule 4703(d) describes the Pegging Order Attribute, including Midpoint Pegging. Pegging is an Order Attribute that allows an Order to have its price automatically set with reference to the NBBO. Midpoint Pegging means Pegging with reference to the midpoint between the Inside Bid and the Inside Offer (the “Midpoint”).<sup>3</sup> An Order with Midpoint Pegging is not displayed.

BX recently proposed changes to Orders with Midpoint Pegging, which were approved by the SEC on November 10, 2016.<sup>4</sup> With this change, if the Inside Bid and Inside Offer are crossed or if there is no Insider Bid and Inside Offer, any existing Order with Midpoint Pegging would be cancelled and any new Order with Midpoint Pegging would be rejected.<sup>5</sup>

BX now proposes to add language to Rule 4703(d) to specify the treatment of Orders with Midpoint Pegging after initial entry and posting to the Exchange Book when the Inside Bid and Inside Offer are subsequently crossed, or if there is subsequently no Inside Bid and/or Inside Offer. Specifically, for Orders with Midpoint Pegging entered through RASH or FIX, if the Order is on the Exchange Book and subsequently the Inside Bid and Inside Offer become crossed, or if there is no Inside Bid and/or Inside Offer, the Order will be removed from the Exchange Book and will be re-entered at the new midpoint once there is a valid Inside Bid and Inside Offer that is not crossed.

As stated in the filing proposing the new Midpoint Pegging functionality, BX believes that the midpoint of a crossed market, or where there is no Inside Bid and Inside Offer, is not a clear and accurate indication of a valid price, and may produce sub-optimal execution

<sup>3</sup> Thus, if the Inside Bid was \$11 and the Inside Offer was \$11.06, an Order with Midpoint Pegging would be priced at \$11.03.

<sup>4</sup> See Securities Exchange Act Release No. 79290 (November 10, 2016), 81 FR 81184 (November 17, 2016) (SR–BX–2016–046).

<sup>5</sup> *Id.*

<sup>18</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.