

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-84093; File No. SR-PEARL-2018-18]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 404A, Select Provisions of Options Listing Procedures Plan, and Rule 406, Long-Term Option Contracts

September 12, 2018

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) ¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 30, 2018, MIAX PEARL, LLC (“MIAX PEARL” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change (“a proposed rule change”) a 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 is filing a proposal to amend Rule 404A, Select Provisions of Options Listing Procedures Plan, and Rule 406, Long-Term Option Contracts.

The text of the proposed rule change is available on the Exchange’s website at <http://www.miaxoptions.com/rule-filings/pearl> at MIAX PEARL’s principal office, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange proposes to amend MIAX PEARL Rule 404A, Select Provisions of Options Listing Procedures Plan, and Rule 406, Long-Term Option Contracts, to conform its rules to the recently approved changes to the Options Listing Procedures Plan (“OLPP”), as well as to the rules of other exchanges.³ The Exchange, which is one of the Participant Exchanges to the OLPP, currently has rules that are designed to incorporate the requirements of the OLPP.⁴ All Participant Exchanges have similar (essentially uniform) rules to ensure consistency and compliance with the OLPP. The Exchange proposes to modify its rules to reflect the recent updates described below, as well as to conform to the rules of the other exchanges.

Addition of Long-Term Equity Options (“LEAPS”)

First, the OLPP has been amended to change the earliest date on which new January LEAPS on equity options, options on Exchange Traded Funds (“ETF”), or options on Trust Issued Receipts (“TIR”) may be added to a single date (from three separate months). As noted in the OLPP Notice, in the past, there were operational concerns related to adding new January LEAPS series for all options classes on which LEAPS were listed on a single trading day.⁵ And, the addition of new series in a pre-electronic environment was a manual process. To accommodate this, the addition of new January LEAPS series was spread across three months (September, October, and November). Today, however, these operational concerns related to January LEAPS have been alleviated as new series can be added in bulk electronically. The Plan Participants, including the Exchange, believe that moving the addition of new January LEAPS series to no earlier than the Monday prior to the September

expiration would reduce marketplace confusion about available January LEAPS series. Where previously January LEAPS series for options classes on the February or March expiration cycles would not have been available as early as January LEAPS series for options classes on the January expiration cycle, under the proposed change, all January LEAPS series will be available concurrently. Accordingly, to conform to this change, the Exchange proposes to modify current Rule 406(b) to reflect that new January LEAPS series on equity options classes, options on ETFs, or options on TIRs, may not be added on a currently listed and traded option class earlier than the Monday prior to the September expiration (which is 28 months before the expiration).⁶

Addition of Equity, ETF, and TIR Option Series After Regular Trading Hours

Second, the OLPP has been amended to allow equity, ETF, and TIR option series to be added based on trading after regular trading hours (*i.e.*, after-market). As noted in the OLPP Notice, the prior version of the OLPP did not allow for option series to be added based on trading following regular trading hours.⁷ As such, the Exchange Participants were unable to add new option series that may result from trading following regular trading hours until the next morning, depending on the range of prices in pre-market trading, which is significant because events that occur after regular trading hours, such as earnings releases, often have an important impact on the price of an underlying security. In addition, there are operational difficulties for market participants throughout the industry adding series after system startup. To avoid the potential burden that would result from the inability to add series as a result of trading following regular trading hours, the OLPP was amended to allow an additional category by which the price of an underlying security may be measured. Specifically, to conform to the amended OLPP, the Exchange proposes to add subparagraph (b)(1)(iv) to Rule 404A to provide that “for options series to be added based on trading following regular trading hours,” the price of the underlying security is measured by “the most recent share price reported by all national securities exchanges between 4:15 p.m. and 6:00 p.m. Eastern Time.”⁸

³ See Securities Exchange Act Release Nos. 82235 (December 7, 2017), 82 FR 58688 (December 13, 2017) (order approving the Fourth Amendment to the OLPP); 81893 (October 18, 2017), 82 FR 49249 (“OLPP Notice”).

⁴ In addition to the Exchange, the “Participant Exchanges” are: Cboe Exchange, Inc.; Cboe BZX Exchange, Inc.; BOX Options Exchange, LLC; Cboe C2 Exchange, Inc.; Cboe EDGX Exchange, Inc.; Miami International Securities Exchange, LLC; Nasdaq BX, Inc.; Nasdaq GEMX, LLC; Nasdaq ISE, LLC; Nasdaq MRX, LLC; Nasdaq Options Market, LLC; Nasdaq PHLX, LLC; NYSE Arca, Inc.; and NYSE American, LLC.

⁵ See OLPP Notice at 49249.

⁶ See proposed Rule 406(b).

⁷ See OLPP Notice at 49250.

⁸ See proposed Rule 404A(b)(1)(iv). The Exchange proposes to relocate “and” from subparagraph (ii)

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¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Technical Changes

The Exchange proposes to modify Rule 406(b) to delete now obsolete operational language, which dates back to when LEAPs were first adopted. The language in question provides that:

After a new long-term option contract series is listed, such series will be opened for trading either when there is buying or selling interest, or forty (40) minutes prior to the close, whichever occurs first. No quotations will be posted for such options series until they are opened for trading.

The Exchange proposes to delete this language because when this language was adopted LEAPs were not opened for trading until late in the trading day unless there was buying or selling interest. Today, however, technological improvements allow the Exchange to open all LEAP series at the same time as all other series in an option class.

Conforming Changes

The Exchange proposes to make certain changes to conform its rules to the rules of other exchanges and to codify a certain provision in the OLPP that is not currently included in its rules. First, the Exchange proposes to add additional clarifying language to Rule 406(b). Specifically, the Exchange proposes to add a paragraph to note that, pursuant to the OLPP, “exchanges that list and trade the same equity option class, ETF option class, or TIR option class are authorized to jointly determine and coordinate with the Options Clearing Corporation on the date of introduction of new LEAP series for that option class consistent with this paragraph (b).” This clarifying language is identical to language contained in other exchanges’ rules.⁹

Second, Amendment 2 to the OLPP¹⁰ provided for a uniform minimum volume threshold per underlying class to qualify for the introduction of a new expiration year of LEAPs on equity, ETF and TIR classes. The Exchange proposes to codify this change made to the OLPP by Amendment 2 as new subparagraph (c) to Rule 406 of the Exchange’s rules. Specifically, this provision will provide: “The Exchange shall not list new LEAP series on equity option classes, options on ETFs, or options on TIRs in a new expiration year if the national average

to (iii) to conform to the change. See proposed Rule 404A(b)(1)(ii) and (iii).

⁹ For example, see Cboe Rule 5.8(b); see also NYSE Arca Rule 6.4–O(d)(ii).

¹⁰ See Securities Exchange Act Release No. 58630 (September 24, 2008), 73 FR 57166 (October 1, 2008) (Order granting permanent approval to Amendment No. 2 to the Plan for the Purpose of Developing and Implementing Procedures Designed to Facilitate the Listing and Trading of Standardized Options).

daily contract volume, excluding LEAP and FLEX series, for that option class during the preceding three (3) calendar months is less than 1,000 contracts, unless the new LEAP series has an expiration year that has already been listed on another exchange for that option class. The preceding volume threshold does not apply to the first six (6) months an equity option class, option on an ETF or option on a TIR is listed on any exchange.” The Exchange notes that this conforming change is necessary to align the rules of the Exchange with the OLPP and with other exchanges.¹¹

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act¹² in general, and furthers the objectives of Section 6(b)(5) of the Act¹³ in particular, 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁴ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the proposed rule change, which conforms to the recently adopted provisions of the OLPP, as amended, allows the Exchange to continue to list extended far term option series that have been viewed as beneficial to traders, investors and public customers. Accordingly, the Exchange believes that the proposal is consistent with the Act because it will allow the Exchange to list all January 2021 expiration series on the Monday prior to the September 2018 expiration. Moreover, this change would simplify the process for adding new January LEAP options series and reduce potential for investor confusion because all new January LEAP options would be made available beginning at the same time, consistent with the amended OLPP. The Exchange notes that this proposal does not propose any new provisions that have not already been

approved by the Commission in the amended OLPP, but instead maintains series listing rules that conform to the amended OLPP.

The proposal to permit series to be added based on after-market trading is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, by allowing the Exchange to make series available for trading with reduced operational difficulties. The Exchange notes that this proposed change, which is consistent with the amended OLPP should provide market participants with earlier notice regarding what options series will be available for trading the following day, and should help to enhance investors’ ability to plan their options trading. The Exchange also believes that the proposed technical changes, including deleting obsolete language and reorganizing and consolidating the rule, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in facilitating transactions in securities, and remove impediments to and perfect the mechanism of a free and open market and a national market system. Furthermore, the Exchange believes that the proposed conforming changes, adding language to Rule 406, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in facilitating transactions in securities, and remove impediments to and perfect the mechanism of a free and open market and a national market system by providing clarity and consistency to the rules, and creating uniformity amongst exchanges with respect to rules related to the OLPP.

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. Specifically, the Exchange believes that by conforming Exchange rules to the amended OLPP, the Exchange would promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection. The Exchange believes that adopting rules, which it anticipates will likewise be adopted by Participant Exchanges, would allow for continued competition between Exchange market participants trading

¹¹ For example, see Cboe Rule 5.8(c); see also NYSE Arca Rule 6.4–O(d)(iii).

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ *Id.*

similar products as their counterparts on other exchanges, while at the same time allowing the Exchange to continue to compete for order flow with other exchanges in option issues.

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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁵ and Rule 19b-4(f)(6) thereunder.¹⁶ Because the 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.¹⁷

A proposed rule change filed under Rule 19b-4(f)(6)¹⁸ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁹ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission notes that the Exchange's proposal would conform to the Exchange's rules to the amended OLPP, which the Commission previously approved.²⁰ Accordingly, the Commission believes that the proposal raises no new or novel regulatory issues and waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission

therefore waives the 30-day operative delay and designates the proposed rule change to be operative upon filing.²¹

At any time within 60 days of the filing of such 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 under Section 19(b)(2)(B)²² of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-PEARL-2018-18 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-2018-18. 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

²¹ 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).

²² 15 U.S.C. 78s(b)(2)(B).

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-2018-18 and should be submitted on or before October 9, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²³

Eduardo A. Aleman,
Assistant Secretary.

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BILLING CODE 8011-01-P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.
ACTION: 30-Day notice.

SUMMARY: The Small Business Administration (SBA) is publishing this notice to comply with requirements of the Paperwork Reduction Act (PRA), which requires agencies to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public of that submission.

DATES: Submit comments on or before October 17, 2018.

ADDRESSES: Comments should refer to the information collection by name and/or OMB Control Number and should be sent to: *Agency Clearance Officer*, Curtis Rich, Small Business Administration, 409 3rd Street SW, 5th Floor, Washington, DC 20416; and *SBA Desk Officer*, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Curtis Rich, Agency Clearance Officer, (202) 205-7030 curtis.rich@sba.gov.

Copies: A copy of the Form OMB 83-1, supporting statement, and other documents submitted to OMB for

²³ 17 CFR 200.30-3(a)(12).

¹⁵ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁶ 17 CFR 240.19b-4(f)(6).

¹⁷ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of 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.

¹⁸ 17 CFR 240.19b-4(f)(6).

¹⁹ 17 CFR 240.19b-4(f)(6)(iii).

²⁰ See OLPP Notice, *supra* note 3.