

Delivery Procedures of the new EUA Phase 4 Contract and to provide general drafting clarifications and improvements for improved readability and conciseness. ICE Clear Europe believes that the new EUA Phase 4 Contracts would provide opportunities for interested market participants to engage in trading activity in this market. ICE Clear Europe does not believe the amendments would adversely affect competition among Clearing Members, materially affect the cost of clearing, adversely affect access to clearing in the new contracts for Clearing Members or their customers, or otherwise adversely affect competition in clearing services. Accordingly, ICE Clear Europe does not believe that the amendments would impose any impact or burden on competition that is not appropriate in furtherance of the purpose of the Act.

*(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments relating to the proposed amendments have not been solicited or received by ICE Clear Europe. ICE Clear Europe will notify the Commission of any comments received with respect to the proposed amendments.

**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) of the Act<sup>11</sup> and paragraph (f) of Rule 19b-4<sup>12</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.

**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-ICEEU-2020-014 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-ICEEU-2020-014. 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 such filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's website at <https://www.theice.com/notices/Notices.shtml?regulatoryFilings>.

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-ICEEU-2020-014 and should be submitted on or before December 9, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**J. Matthew DeLesDernier,**  
Assistant Secretary.

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-90400; File No. SR-PEARL-2020-24]

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

November 12, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 30, 2020, MIAX PEARL, LLC ("MIAX PEARL" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange is filing a proposal to amend the fee schedule applicable for MIAX PEARL Equities, an equities trading facility of the Exchange (the "Fee Schedule").<sup>3</sup> The proposed fees are scheduled to become operative November 2, 2020.

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.

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

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

<sup>3</sup> See Exchange Rule 1901.

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

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

<sup>13</sup> 17 CFR 200.30-3(a)(12).

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

1. Purpose

The purpose of the proposed rule change is to amend the Fee Schedule applicable to MIAX PEARL Equities to increase the rebate for displayed orders<sup>4</sup> on the MIAX PEARL Equities Book<sup>5</sup> that add liquidity in securities priced at or above \$1.00. The Exchange currently provides a rebate of \$0.0028 per share to displayed orders that add liquidity in securities priced at or above \$1.00. The Exchange now proposes to increase the rebate for displayed orders that add liquidity in securities priced at or above \$1.00 to \$0.0032 per share.

The purpose of this proposed change is for business and competitive reasons. As a new entrant into the equities market, the Exchange initially adopted the rebate of \$0.0028 per share for displayed orders that add liquidity in securities priced at or above \$1.00 in order to encourage market participants to submit displayed orders to the Exchange. The Exchange now believes that it is appropriate to increase the rebate to \$0.0032 per share for displayed orders that add liquidity in securities priced at or above \$1.00, thereby continuing to encourage market participants to submit more displayed orders to the Exchange and increase displayed order flow. The Exchange believes that this proposal will result in encouraging market participants to submit more displayed orders to the Exchange, thereby increasing displayed order liquidity, which benefits all Exchange participants by providing more trading opportunities and tighter spreads.

The proposed rebate increase will become effective on November 2, 2020. The Exchange does not propose any other changes to the MIAX PEARL Equities Fee Schedule.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act<sup>6</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>7</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges among its members and issuers and other persons using its facilities. As discussed above, the Exchange operates in a highly

fragmented and competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or rebates/incentives to be insufficient. The Exchange believes that the Fee Schedule reflects a simple and competitive pricing structure, which is designed to incentivize market participants to add aggressively priced displayed liquidity and direct their order flow to the Exchange. The Exchange believes the proposed increased rebate for displayed orders that add liquidity in securities priced at or above \$1.00 will continue to promote price discovery and price formation and deepen liquidity that is subject to the Exchange's transparency, regulation, and oversight as an exchange, thereby enhancing market quality to the benefit of all Equity Members<sup>8</sup> and investors.

In particular, the Exchange believes the proposed increase to the rebate for displayed orders in securities priced above \$1.00 from \$0.0028 to \$0.0032 per share is reasonable because it would uniformly provide a rebate of \$0.0032 per share to displayed orders in all equity securities priced at or above \$1.00 traded on the Exchange. Further, the Exchange believes the proposed increased rebate will encourage additional order flow on the Exchange, which may result in greater liquidity to the benefit of all market participants on the Exchange by providing more trading opportunities. The Exchange also believes that it is reasonable, equitable and not unfairly discriminatory to provide a higher rebate to displayed orders that add liquidity than to non-displayed orders as this rebate structure is designed to incentivize Equity Members to send the Exchange displayed orders, thereby contributing to price discovery and price formation, consistent with the overall goal of enhancing market quality. The Exchange further believes that it is appropriate and reasonable to provide a standard rebate of \$0.0032 per share for displayed orders that add liquidity in securities priced at or above \$1.00 because this rebate is consistent with similar rebates provided by other exchanges.<sup>9</sup> The proposed increased

rebate is not unfairly discriminatory because it will apply equally to all Equity Members.

Further, the Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."<sup>10</sup>

As the Commission itself recognized, the market for trading services in NMS stocks has become "more fragmented and competitive."<sup>11</sup> Indeed, equity trading is currently dispersed across 16 exchanges,<sup>12</sup> 31 alternative trading systems,<sup>13</sup> and numerous broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange currently has more than 20% market share (whether including or excluding auction volume).<sup>14</sup> Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, the Exchange only recently launched trading operations on September 25, 2020, and thus has a market share of approximately less than 1% of executed volume of equities trading.

The Exchange has designed its proposed increased rebate to balance the need to attract order flow as a new

share. See <https://www.nyse.com/markets/nyse/trading-info/fees>. Nasdaq Stock Market LLC ("Nasdaq") fee schedule set forth various tiers that provide the ability of a firm to receive a rebate as high as \$0.0033 per share. See <http://nasdaqtrader.com/Trader.aspx?id=PriceListTrading2>. The Cboe BZX Exchange, Inc. ("BZX") sets forth various tiers that provide the ability of a firm to receive a rebate as high as \$0.0033 per share or higher. See the Tier 1 of the Total Volume Tier and Tier 2 of the Step Up Tier available at [https://markets.cboe.com/us/equities/membership/fee\\_schedule/bzx/](https://markets.cboe.com/us/equities/membership/fee_schedule/bzx/).

<sup>10</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (File No. S7-10-04) ("Regulation NMS").

<sup>11</sup> See Securities Exchange Act Release No. 82873 (March 14, 2018), 83 FR 13008 (March 26, 2018) (File No. S7-05-18) (Transaction Fee Pilot for NMS Stocks).

<sup>12</sup> See Cboe Global Markets, U.S. Equities Market Volume Summary, available at [https://markets.cboe.com/us/equities/market\\_share/](https://markets.cboe.com/us/equities/market_share/).

<sup>13</sup> See FINRA ATS Transparency Data, available at <https://otctransparency.finra.org/otctransparency/AtsIssueData>. A list of alternative trading systems registered with the Commission is available at <https://www.sec.gov/foia/docs/atlist.htm>.

<sup>14</sup> See *supra* note 12.

<sup>4</sup> See Exchange Rule 2614(c)(3).

<sup>5</sup> The term "MIAX PEARL Equities Book" means the electronic book of orders in equity securities maintained by the System. See Exchange Rule 1901.

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>8</sup> The term "Equity Member" means a Member authorized by the Exchange to transact business on MIAX PEARL Equities. See Exchange Rule 1901.

<sup>9</sup> For example, the New York Stock Exchange, Inc. ("NYSE") fee schedule sets forth various tiers that provide the ability of their Designated Market Makers to receive a rebate as high as \$0.0045 per

exchange entrant with the desire to continue to provide a simple fee structure to market participants. The Exchange believes its proposed increased rebate structure enables the Exchange to compete for order flow. The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue to reduce use of certain categories of products, in response to fee changes. With respect to nonmarketable orders which provide liquidity on an exchange, Equity Members can choose from any one of the 16 currently operating registered exchanges to route such order flow. Accordingly, competitive forces reasonably constrain exchange transaction fees that relate to orders that would provide displayed liquidity on an exchange. Stated otherwise, changes to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow. Given this competitive environment, the Exchange's proposed increased rebate represents a reasonable attempt to attract order flow to a new exchange entrant.

#### *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 not necessary or appropriate in furtherance of the purposes of the Act. Rather, the Exchange believes that the proposed change would encourage the submission of additional order flow to a public exchange, thereby promoting market depth, execution incentives and enhanced execution opportunities, as well as price discovery and transparency for all Equity Members and non-Equity Members. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."<sup>15</sup>

The Exchange does not believe that the proposed increased rebate will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that the proposed increased rebate will increase competition and is intended to draw volume to the Exchange. The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market

participants can shift order flow or discontinue to reduce use of certain categories of products, in response to new or different pricing structures being introduced into the market. Accordingly, competitive forces constrain the Exchange's transaction fees and rebates, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. As a new exchange, the Exchange faces intense competition from existing exchanges and other non-exchange venues that provide markets for equities trading. Although this increased rebate is intended to attract liquidity to the Exchange, most other exchanges in operation today already offer multiple incentives to their participants, including tiered pricing that provides higher rebates or discounted executions, and other exchanges will be able to modify such incentives in order to compete with the Exchange.

Further, while pricing incentives do cause shifts of liquidity between trading centers, market participants make determinations on where to provide liquidity or route orders to take liquidity based on factors other than pricing, including technology, functionality, and other considerations. Consequently, the Exchange believes that the degree to which its proposed increased rebate could impose any burden on competition is extremely limited, and does not believe that such increased rebate would burden competition of Equity Members or competing venues in a manner that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange does not believe that the proposed increased rebate will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed increased rebate will apply equally to all Equity Members. The proposed increased rebate is intended to encourage market participants to add liquidity to the Exchange by providing a rebate that is comparable to those offered by other exchanges, which the Exchange believes will help to encourage Equity Members to send orders to the Exchange to the benefit of all Exchange participants. As the proposed rates are equally applicable to all market participants, the Exchange does not believe there is any burden on intramarket competition.

#### *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/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-PEARL-2020-24 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to File Number SR-PEARL-2020-24. 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

<sup>15</sup> See *supra* note 10.

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

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

proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-PEARL-2020-24 and should be submitted on or before December 9, 2020.

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

**J. Matthew DeLesDernier,**  
Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90416; File No. SR-OCC-2020-806]

### Self-Regulatory Organizations; the Options Clearing Corporation; Notice of Filing of Advance Notice Related to Proposed Changes To Update the Options Clearing Corporation's Recovery and Orderly Wind-Down Plan

November 13, 2020.

Pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled Payment, Clearing and Settlement Supervision Act of 2010 ("Clearing Supervision Act")<sup>1</sup> and Rule 19b-4(n)(1)(i)<sup>2</sup> under the Securities Exchange Act of 1934 ("Act" or "Exchange Act"),<sup>3</sup> notice is hereby given that on October 20, 2020, the Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") an advance notice as described in Items I, II and III below, which Items have been prepared by OCC. The Commission is publishing this notice to solicit

comments on the advance notice from interested persons.

#### I. Clearing Agency's Statement of the Terms of Substance of the Advance Notice

This advance notice is submitted in connection with a proposed change to update OCC's Recovery and Orderly Wind-Down Plan ("RWD Plan" or "Plan"), adopted pursuant to the requirement in Rule 17Ad-22(e)(3)(ii),<sup>4</sup> to reflect: (i) Changes to OCC's capital structure resulting from the disapproval of OCC's previously approved "Capital Plan"<sup>5</sup> and the subsequent approval of OCC's "Capital Management Policy,"<sup>6</sup> and (ii) changes made to each chapter of the Plan during OCC's annual internal review and update of the Plan, as required by OCC's internal governance.

The RWD Plan is included as confidential Exhibit 5 to SR-OCC-2020-806. Material proposed to be added is marked by underlining and material proposed to be deleted is marked by strikethrough text.<sup>7</sup> The proposed changes are described in detail in Item II below. All terms with initial capitalization not defined herein have the same meaning as set forth in OCC's By-Laws and Rules.<sup>8</sup>

#### II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Advance Notice

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

##### (A) Clearing Agency's Statement on Comments on the Advance Notice Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the advance notice and none have been received. OCC will notify the

<sup>4</sup> 17 CFR 240.17Ad-22(e)(3)(ii).

<sup>5</sup> Securities Exchange Act Release No. 85121 (Feb. 13, 2019), 84 FR 5157 (Feb. 20, 2019) (SR-OCC-2015-02).

<sup>6</sup> Securities Exchange Act Release No. 86725 (Aug. 21, 2019), 84 FR 44952 (Aug. 27, 2019) (SR-OCC-2019-007).

<sup>7</sup> OCC has also filed a proposed rule change with the Commission in connection with this proposal. See SR-OCC-2020-013.

<sup>8</sup> OCC's By-Laws and Rules can be found on OCC's public website: <https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules>.

Commission of any written comments received by OCC.

##### (B) Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing, and Settlement Supervision Act

#### Description of the Proposed Change Background

On August 23, 2018, the Commission approved OCC's proposed rule change to formalize and update OCC's RWD Plan, consistent with the requirements of Rule 17Ad-22(e)(3)(ii).<sup>9</sup> As approved, the RWD Plan incorporated key pieces of OCC's previously approved Capital Plan, including but not limited to the Capital Plan's provision for "Replenishment Capital."<sup>10</sup> In OCC's RWD Plan, Replenishment Capital was one of the tools by which OCC could have recapitalized in certain of its recovery and wind-down scenarios.

On February 13, 2019, the Commission disapproved OCC's Capital Plan.<sup>11</sup> The disapproval of the Capital Plan left OCC's RWD Plan with several invalid references to the Capital Plan or to certain of its component parts, including references to Replenishment Capital as one of OCC's identified tools for recovery and wind-down and references to a trigger event within the Capital Plan as one of OCC's recovery triggers. As a result of the disapproval of the Capital Plan, OCC subsequently proposed the "Capital Management Policy," which among other things establishes a new mechanism for funding OCC's replenishment capital and changes OCC's "default waterfall" (i.e., the resources available to OCC in the event of a Clearing Member's suspension).<sup>12</sup> These changes to OCC's replenishment capital and default waterfall necessitated changes to existing passages concerning the same in the RWD Plan.

In addition, OCC has made changes to its RWD Plan as a result of its annual review and update process. As adopted, the RWD Plan itself recognizes OCC's internal governance requirement to review and update the Plan at least every twelve months. Accordingly, during the first several months of 2019

<sup>9</sup> Securities Exchange Act Release No. 83918 (Aug. 23, 2018), 83 FR 44091 (Aug. 29, 2018) (SR-OCC-2017-021).

<sup>10</sup> Securities Exchange Act Release No. 74452 (Mar. 6, 2015), 80 FR 13058 (Mar. 12, 2015) (SR-OCC-2015-02). The Capital Plan was a previously approved plan for raising additional capital under which the securities options exchanges that own equity in OCC committed to contributing additional capital to OCC under certain conditions and provided for the provision of further Replenishment Capital in certain circumstances.

<sup>11</sup> See supra note 5.

<sup>12</sup> See supra note 6.

<sup>18</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 12 U.S.C. 5465(e)(1).

<sup>2</sup> 17 CFR 240.19b-4(n)(1)(i).

<sup>3</sup> 15 U.S.C. 78a et seq.