

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of \* 23

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549  
Form 19b-4

File No. \* SR 2023 - \* 39

Amendment No. (req. for Amendments \*)

Filing by MIAX PEARL, LLC

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
--	---	--	--	--	---

Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	Rule <input type="checkbox"/> 19b-4(f)(1) <input type="checkbox"/> 19b-4(f)(4) <input type="checkbox"/> 19b-4(f)(2) <input type="checkbox"/> 19b-4(f)(5) <input type="checkbox"/> 19b-4(f)(3) <input checked="" type="checkbox"/> 19b-4(f)(6)	Submit with link to Prefiling or Request for Waiver option
-----------------------------------	--	--	--	--

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010  
Section 806(e)(1) \*

Section 806(e)(2) \*

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934  
Section 3C(b)(2) \*

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

**Description**

Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

Amend Rule 2614

**Contact Information**

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name \* Chris    Last Name \* Solgan

Title \* VP, Senior Counsel

E-mail \* csolgan@miaxglobal.com

Telephone \* (609) 423-9414    Fax

**Signature**

Pursuant to the requirements of the Securities Exchange of 1934, MIAX PEARL, LLC has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date 08/25/2023 (Title \*)

By Tanya Kitaigorovski AVP, Associate Counsel  
(Name \*)

NOTE: Clicking the signature block at right will initiate digitally signing the form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Date: 2023.08.25  
Tanya Kitaigorovski

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

**Form 19b-4 Information \***

Add Remove View

SR-PEARL-2023-39 - 19b-4.docx

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change \***

Add Remove View

SR-PEARL-2023-39- Exhibit 1.docx

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A - Notice of Proposed Rule Change, Security-Based Swap Submission, or Advanced Notice by Clearing Agencies \***

Add Remove View

--

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2- Notices, Written Comments, Transcripts, Other Communications**

Add Remove View

--

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit Sent As Paper Document

**Exhibit 3 - Form, Report, or Questionnaire**

Add Remove View

--

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit Sent As Paper Document

**Exhibit 4 - Marked Copies**

Add Remove View

--

The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

Add Remove View

SR-PEARL-2023-39 - Exhibit 5.docx

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change

**Partial Amendment**

Add Remove View

--

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

## 1. **Text of the Proposed Rule Change**

(a) MIAX PEARL, LLC (“MIAX Pearl” or the “Exchange”), 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> is filing with the Securities and Exchange Commission (the “Commission”) a proposal to amend the description of Limit Orders under Exchange Rule 2614(a)(1) to provide optional functionality that would cancel displayed Limit Orders<sup>3</sup> on the Exchange’s equity trading platform (referred to herein as “MIAX Pearl Equities”) that do not establish a new National Best Bid or Offer (“NBBO”), as described below.

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1, and the text of the proposed rule change is attached hereto as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

## 2. **Procedures of the Self-Regulatory Organization**

The proposed rule change was approved by the Chief Executive Officer of the Exchange or his designee pursuant to authority delegated by the Exchange Board of Directors on February 2, 2023. Exchange staff will advise the Board of Directors of any action taken pursuant to delegated authority. No other action is necessary by the Exchange for the filing of the proposed rule change.

Questions and comments on the proposed rule change may be directed to Chris Solgan, Vice President and Senior Counsel, at (609) 897-8494.

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

---

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

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

<sup>3</sup> See Exchange Rule 2614(a)(1) for a description of Limit Orders.

a. Purpose

The Exchange proposes to amend the description of Limit Orders under Exchange Rule 2614(a)(1) to provide optional functionality that cancel a displayed Limit Order to buy (sell) on MIAX Pearl Equities that does not establish a new NBB (NBO), as described herein. The Exchange intends to begin to notify Users<sup>4</sup> whether their displayed Limit Order established a new NBBO upon entry or when modified via a Cancel/Replace message and such modification causes the order to lose time priority.<sup>5</sup> This functionality is related to a separate proposal to adopt a fee program to be known as NBBO Setter Plus on September 1, 2023 that would provide an enhanced rebate to those displayed Limit Orders that establish the NBBO.<sup>6</sup> Users that are notified that their displayed Limit Order or modification of such order did not establish a new NBBO may then submit a new displayed Limit Order in an attempt to then establish a new NBBO and qualify for the upcoming NBBO Setter Plus program.

In connection with the above initiatives, Users requested the ability to instruct the

---

<sup>4</sup> The term “User” means any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Exchange Rule 2602. See Exchange Rule 1901.

<sup>5</sup> The Exchange intends to implement this proposed rule change and begin to notify Users whether their displayed Limit Order established a new NBBO upon entry or when modified via a Cancel/Replace message on August 31, 2023 (if waiver of the operative delay is granted) or on the effective date of this filing. See, e.g., MIAX Pearl Equities - Updated Interface Specifications Published for Future Enhancements - New NBBO Setter Flag and Cancellation Feature if Order is Not Setting the NBBO, dated July 26, 2023, available at <https://www.miaxglobal.com/alert/2023/07/26/miax-pearl-equities-updated-interface-specifications-published-future>, and MIAX Pearl Equities - Previously Announced New NBBO Setter Flag and Cancellation Feature will be available on Thursday, August 31, 2023; Corresponding Updated Risk Protections Guide and Order Type Combinations Guide Now on Website, dated August 11, 2023, available at <https://www.miaxglobal.com/alert/2023/08/11/miax-pearl-equities-previously-announced-new-nbbo-setter-flag-and>. This functionality is limited to displayed Limit Orders because that is the only order type offered by the Exchange that may establish a new NBBO.

<sup>6</sup> The Exchange intends to submit a separate filing with the Commission for immediate effectiveness pursuant to Section 19(b)(1) of the Exchange Act and Rule 19b-4(f)(2) thereunder a proposal to establish the NBBO Setter Plus Program. The Exchange notes that other exchanges have adopted similar programs. See Securities Exchange Act Release Nos. 95124 (June 17, 2022) 87 FR 37894 (June 24, 2022) (SR-CboeBZX-2022-034); 14923 (March 10, 2022) 87 FR 14923 (March 16, 2022) (SR-MEMX-2022-01); 68209 (November 9, 2012) 77 FR 69519 (November 19, 2012) (SR-NASDAQ-2012-126); and 89754 (September 2, 2020), 85 FR 55550 (September 8, 2020) (SR-NYSE-2020-71).

Exchange to cancel their displayed Limit Order where it does not establish a new NBBO. Therefore, the Exchange proposes to allow Users to instruct the Exchange, on an order-by-order basis, to cancel their displayed Limit Order to buy (sell) when that order does not establish a new NBB (NBO) upon entry or when modified via a Cancel/Replace message in accordance with Exchange Rule 2614(e) and such modification results in the order losing time priority in accordance with Exchange Rule 2616(a)(5). The proposed functionality would be set forth under Exchange Rule 2614(a)(1)(J). For the avoidance of doubt, the default behavior would be for the Exchange to not cancel the order under this proposal, unless otherwise instructed to do so upon entry on an order-by-order basis.

The following example illustrates the proposed functionality upon entry. Assume the NBBO is \$10.00 by \$10.05. A User submits a displayed Limit Order to buy with a limit price of \$10.01 and instructs the Exchange to cancel such order should it not establish a new NBB. The order does establish a new NBB upon entry and is posted to the MIAX Pearl Equities Book,<sup>7</sup> resulting in a new NBBO of \$10.01 by \$10.05. However, such order would have been cancelled by the Exchange if its limit price was \$10.00 or lower.

The Exchange also proposes to allow Users to instruct the Exchange to cancel a displayed Limit Order when that order does not establish a new NBB (NBO) after being modified via a Cancel/Replace message in accordance with Exchange Rule 2614(e) and such modification results in the order losing time priority in accordance with Exchange Rule 2616(a)(5). In sum, Exchange Rule 2614(e) provides that only the price, sell long, sell short, or short exempt indicator, and size terms of the order may be changed by a Cancel/Replace Message. Exchange Rule 2616(a)(5) provides that in the event an order has been modified via a Cancel/Replace

---

<sup>7</sup> The term “MIAX Pearl Equities Book” means the electronic book of orders in equity securities maintained by the System. See Exchange Rule 1901.

message in accordance with Exchange Rule 2614(e) above, such order only retains its timestamp if such modification involves a decrease in the size of the order, a change to the Max Floor of an order with a Reserve Quantity, or when a Short Sale Period, as defined in Exchange Rule 2614(g)(3)(A), is not in effect, a change in position from (A) sell to sell short; (B) sell to sell short exempt; (C) sell short to sell; (D) sell short to sell short exempt; (E) sell short exempt to sell; and (F) sell short exempt to sell short.<sup>8</sup> Any other modification to an order, including an increase in the size of the order and/or price change, will result in such order losing time priority as compared to other orders in the MIAX Pearl Equities Book and the timestamp for such order being revised to reflect the time of the modification.

The following illustrates how the order from the above example would be handled if later modified via a Cancel/Replace message that results in a loss in time priority. As illustrated in the above example, the displayed Limit Order to buy established a new NBBO of \$10.01 by \$10.05 upon entry and now continues to rest on the MIAX Pearl Equities Book at \$10.01. Assume the away BBO is \$10.00 by \$10.05 and a User submit a Cancel/Replace message to change the order's limit price to \$9.99. This would result in the away BBO of \$10.00 by \$10.05 becoming the new NBBO. The displayed Limit Order resting on the MIAX Pearl Equities Book would, therefore, be cancelled because its price is inferior to the new NBB of \$10.00 and would no longer set the NBB.<sup>9</sup>

Users would need to instruct the Exchange upon entry on an order-by-order basis to cancel their order as proposed herein. The proposed functionality would be entirely optional and, absent an instruction from the User on entry to the contrary, a displayed Limit Order that

---

<sup>8</sup> See, e.g., Securities Exchange Act Release No. 93506 (November 2, 2021), 86 FR 61796 (November 8, 2021) (SR-PEARL-2021-35).

<sup>9</sup> However, such order would not have been cancelled by the Exchange if its new limit price was \$10.02.

does not establish a new NBBO as described above would not be cancelled by the Exchange. Users may choose to use the proposed functionality based on their own business needs and trading behavior.

All Users would be notified that their displayed Limit Order or modification to such order did not establish a new NBBO, regardless of whether a User instructs the Exchange to cancel a displayed Limit Order when it does not establish a new NBBO as described herein. Users that do not inform the Exchange upon entry to cancel such order may choose to cancel that order on their own and submit a new order in an attempt to then establish a new NBBO and qualify for the upcoming NBBO Setter Plus program.

b. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.<sup>10</sup> Specifically, the proposal is consistent with Section 6(b)(5) of the Act<sup>11</sup> because it would 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, and, in general, protect investors and the public interest because it would provide Users optional functionality to assist them in managing their order flow and attempts to establish a new NBBO. The proposal further remove impediments to, and perfect the mechanism of, a free and open market and a national market system because Users may instruct the Exchange upon entry to cancel their displayed Limit Order or modification to such order that did not establish a new NBBO so that they may then submit a new order to again attempt to establish a new NBBO and qualify for the upcoming NBBO Setter Plus program. The

---

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

proposal would also promote just and equitable principles of trade because it would facilitate a User's ability to enter orders that establish a new NBBO by enabling them to enter a new order in a timelier manner and not submit a separate cancellation message prior to entering the new order. The proposed optional functionality should encourage more aggressively priced displayed liquidity on the Exchange, thereby, improving price discovery and potentially attracting additional contra-side order flow.

As stated above, the proposed functionality would be entirely optional and, absent an instruction from the User to the contrary, a displayed Limit Order that does not establish a new NBBO as described above would not be cancelled by the Exchange. Users may choose to not use the proposed functionality and make their own decision whether to cancel the order on their own based on their business needs and trading behavior.

Lastly, the exchange notes that at least one other exchange that currently offers a similar NBBO Setter Plus program also provides for the ability to instruct the exchange to cancel an order if it does not establish the NBBO.<sup>12</sup>

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

The Exchange does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The proposed rule change would not have any impact on intramarket competition because it would be available to all Users and Users may choose to use the proposed functionality based on their own business needs or trading behavior. The proposal may enhance

---

<sup>12</sup> See reason code 240 on page 110 of the [NYSE Pillar Gateway Binary Protocol Specifications](#), dated June 27, 2023, available at [NYSE Pillar Gateway Binary Protocol Specification.pdf](#). See also Securities Exchange Act Release No. 89754 (September 2, 2020), 85 FR 55550 (September 8, 2020) (SR-NYSE-2020-71). Functionality to cancel the order if it does not set the NBBO was not included in SR-NYSE-2020-71.



intermarket competition because it would allow the Exchange to better compete with at least one other exchange that currently offers the ability to instruct the exchange to cancel an order if it does not establish the NBBO as part of its own NBBO Setter Plus program.<sup>13</sup> The proposal may also improve the Exchange's competitive position by encouraging the entry of displayed orders priced more aggressively than the NBBO, improving the Exchange's market quality, and attracting additional liquidity. The proposal responds to the current competitive environment where order flow providers have a choice of where to direct liquidity-providing orders by providing optional functionality to facilitate the entry of aggressively priced displayed liquidity on the Exchange.

5. **Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others**

No written comments were either solicited or received.

6. **Extension of Time Period for Commission Action**

Not applicable.

7. **Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)**

Pursuant to Section 19(b)(3)(A) of the Act<sup>14</sup> and Rule 19b-4(f)(6)<sup>15</sup> thereunder, the Exchange has designated this proposal as one that effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Rule 19b-4(f)(6) requires a self-regulatory

---

<sup>13</sup> Id.

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(6).

organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

Furthermore, a proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>16</sup> normally does not become operative for 30 days after the date of its filing. Accordingly, the Exchange believes that the proposed rule change is eligible for immediately effective treatment under the Commission's current procedures for processing rule filings.

The Exchange believes that the proposed rule change meets the criteria of subparagraph (f)(6) of Rule 19b-4<sup>17</sup> because it would provide Users optional functionality to assist them in managing their order flow and is designed to facilitate their ability to enter aggressively priced displayed Limit Orders that establish a new NBBO. The proposed functionality would be entirely optional and, absent an instruction from the User to the contrary, a displayed Limit Order that does not establish a new NBBO as described above would not be cancelled by the Exchange. Users may choose to not use the proposed functionality and make their own decision whether to cancel the order on their own based on their business needs and trading behavior. The proposal is designed to facilitate a User's ability to enter orders that establish a new NBBO by enabling them to enter a new order in a timelier manner and not submit a separate cancellation message prior to do. The proposed optional functionality should encourage more aggressively priced displayed liquidity on the Exchange, thereby, improving price discovery to the benefit of all investors. Therefore, the proposed rule change would not significantly affect the protection of investors or the public interest. The proposal also does not impose any

---

<sup>16</sup> Id.

<sup>17</sup> Id.

significant burden on competition, but rather enhances competition, because it would enable the Exchange to better compete with at least one other exchange that offers similar functionality as part of its own NBBO setter program.<sup>18</sup> Based on the foregoing, the Exchange has designated this rule filing as noncontroversial under Section 19(b)(3)(A) of the Act<sup>19</sup> and paragraph (f)(6) of Rule 19b-4 thereunder.<sup>20</sup>

The Exchange respectfully requests that the Commission waive the 30-day operative delay period after which a proposed rule change under Rule 19b-4(f)(6) becomes effective. As discussed above, the proposed cancellation functionality is related to a separate proposal to adopt a fee program to be known as NBBO Setter Plus on September 1, 2023 and similar programs are currently already offered by other exchanges.<sup>21</sup> The Exchange announced the September 1, 2023 launch of the NBBO Setter Plus program and proposed cancellation functionality back on July 26, 2023 and Users have begun to make necessary changes to participate in the program, which includes testing and technology related changes.<sup>22</sup> Technologically tied to the proposed cancellation functionality is separate functionality under the NBBO Setter Plus program that would notify Users whether their displayed Limit Order established a new NBBO upon entry or when modified via a Cancel/Replace message and such modification causes the order to lose time priority (i.e., due to technological constraints the Exchange cannot launch the notification and cancellation functionality separately). Some Users deem the proposed functionality necessary for them to participate in the NBBO Setter Plus program and at least one other

---

<sup>18</sup> See supra note 12.

<sup>19</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>20</sup> 17 CFR 240.19b-4(f)(6).

<sup>21</sup> See supra note 6.

<sup>22</sup> See supra note 5.

exchange has offered similar cancelation functionality as part of its own NBBO setter like program, possibly since 2020.<sup>23</sup> Waiver of the operative delay would allow the Exchange to offer the proposed cancelation and connected NBBO notification functionality by September 1, 2023, the date it intends to begin to offer an NBBO Setter Plus program and allow it to better compete with other exchanges that offer similar NBBO setter like programs and functionality from day one.<sup>24</sup> Absent a waiver of the operative delay, the Exchange would not be able to include functionality that would improve the competitiveness of its NBBO Setter Plus program until after the operative delay period expires, causing it to be at a disadvantage during this period. Again, the Exchange notified Users of the upcoming NBBO Setter Plus program and related functionality back in July 2023 and Users have been preparing to participate in the program during this time and should be prepared to use such functionality on day one. For the above reasons, waiver of the operative delay is consistent with the protection of investors and the public interest.

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.

**8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission**

Not applicable.

**9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act**

Not applicable.

---

<sup>23</sup> See reason code 240 on page 110 of the NYSE Pillar Gateway Binary Protocol Specifications, dated June 27, 2023, available at [NYSE Pillar Gateway Binary Protocol Specification.pdf](#).

<sup>24</sup> See *supra* note 6.

**10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act**

Not applicable.

**11. Exhibits**

1. Notice of proposed rule for publication in the Federal Register.
5. Text of proposed rule change.

**EXHIBIT 1**SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. SR-PEARL-2023-39)

August \_\_\_\_\_, 2023

## Self-Regulatory Organizations: Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Exchange Rule 2614

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 August \_\_\_\_, 2023, MIAX PEARL, LLC (“MIAX Pearl” or the “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 proposes to amend the description of Limit Orders under Exchange Rule 2614(a)(1) to provide optional functionality that would cancel displayed Limit Orders<sup>3</sup> on the Exchange’s equity trading platform (referred to herein as “MIAX Pearl Equities”) that do not establish a new National Best Bid or Offer (“NBBO”), as described below.

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

---

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

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

<sup>3</sup> See Exchange Rule 2614(a)(1) for a description of Limit Orders.

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 description of Limit Orders under Exchange Rule 2614(a)(1) to provide optional functionality that cancel a displayed Limit Order to buy (sell) on MIAX Pearl Equities that does not establish a new NBB (NBO), as described herein. The Exchange intends to begin to notify Users<sup>4</sup> whether their displayed Limit Order established a new NBBO upon entry or when modified via a Cancel/Replace message and such modification causes the order to lose time priority.<sup>5</sup> This functionality is related to a separate proposal to adopt a fee program to be known as NBBO Setter Plus on September 1, 2023 that would provide an enhanced rebate to those displayed Limit Orders that establish the NBBO.<sup>6</sup> Users that are

---

<sup>4</sup> The term "User" means any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Exchange Rule 2602. See Exchange Rule 1901.

<sup>5</sup> The Exchange intends to implement this proposed rule change and begin to notify Users whether their displayed Limit Order established a new NBBO upon entry or when modified via a Cancel/Replace message on August 31, 2023 (if waiver of the operative delay is granted) or on the effective date of this filing. See, e.g., MIAX Pearl Equities - Updated Interface Specifications Published for Future Enhancements - New NBBO Setter Flag and Cancellation Feature if Order is Not Setting the NBBO, dated July 26, 2023, available at <https://www.miaxglobal.com/alert/2023/07/26/miax-pearl-equities-updated-interface-specifications-published-future>, and MIAX Pearl Equities - Previously Announced New NBBO Setter Flag and Cancellation Feature will be available on Thursday, August 31, 2023; Corresponding Updated Risk Protections Guide and Order Type Combinations Guide Now on Website, dated August 11, 2023, available at <https://www.miaxglobal.com/alert/2023/08/11/miax-pearl-equities-previously-announced-new-nbbo-setter-flag-and>. This functionality is limited to displayed Limit Orders because that is the only order type offered by the Exchange that may establish a new NBBO.

<sup>6</sup> The Exchange intends to submit a separate filing with the Commission for immediate effectiveness pursuant to Section 19(b)(1) of the Exchange Act and Rule 19b-4(f)(2) thereunder a proposal to establish the NBBO Setter Plus Program. The Exchange notes that other exchanges have adopted similar programs. See Securities Exchange Act Release Nos. 95124 (June 17, 2022) 87 FR 37894 (June 24, 2022) (SR-

notified that their displayed Limit Order or modification of such order did not establish a new NBBO may then submit a new displayed Limit Order in an attempt to then establish a new NBBO and qualify for the upcoming NBBO Setter Plus program.

In connection with the above initiatives, Users requested the ability to instruct the Exchange to cancel their displayed Limit Order where it does not establish a new NBBO. Therefore, the Exchange proposes to allow Users to instruct the Exchange, on an order-by-order basis, to cancel their displayed Limit Order to buy (sell) when that order does not establish a new NBB (NBO) upon entry or when modified via a Cancel/Replace message in accordance with Exchange Rule 2614(e) and such modification results in the order losing time priority in accordance with Exchange Rule 2616(a)(5). The proposed functionality would be set forth under Exchange Rule 2614(a)(1)(J). For the avoidance of doubt, the default behavior would be for the Exchange to not cancel the order under this proposal, unless otherwise instructed to do so upon entry on an order-by-order basis.

The following example illustrates the proposed functionality upon entry. Assume the NBBO is \$10.00 by \$10.05. A User submits a displayed Limit Order to buy with a limit price of \$10.01 and instructs the Exchange to cancel such order should it not establish a new NBB. The order does establish a new NBB upon entry and is posted to the MIAX Pearl Equities Book,<sup>7</sup> resulting in a new NBBO of \$10.01 by \$10.05. However, such order would have been cancelled by the Exchange if its limit price was \$10.00 or lower.

The Exchange also proposes to allow Users to instruct the Exchange to cancel a displayed

---

CboeBZX-2022-034); 14923 (March 10, 2022) 87 FR 14923 (March 16, 2022) (SR-MEMX-2022-01); 68209 (November 9, 2012) 77 FR 69519 (November 19, 2012) (SR-NASDAQ-2012-126); and 89754 (September 2, 2020), 85 FR 55550 (September 8, 2020) (SR-NYSE-2020-71).

<sup>7</sup> The term “MIAX Pearl Equities Book” means the electronic book of orders in equity securities maintained by the System. See Exchange Rule 1901.



Limit Order when that order does not establish a new NBB (NBO) after being modified via a Cancel/Replace message in accordance with Exchange Rule 2614(e) and such modification results in the order losing time priority in accordance with Exchange Rule 2616(a)(5). In sum, Exchange Rule 2614(e) provides that only the price, sell long, sell short, or short exempt indicator, and size terms of the order may be changed by a Cancel/Replace Message. Exchange Rule 2616(a)(5) provides that in the event an order has been modified via a Cancel/Replace message in accordance with Exchange Rule 2614(e) above, such order only retains its timestamp if such modification involves a decrease in the size of the order, a change to the Max Floor of an order with a Reserve Quantity, or when a Short Sale Period, as defined in Exchange Rule 2614(g)(3)(A), is not in effect, a change in position from (A) sell to sell short; (B) sell to sell short exempt; (C) sell short to sell; (D) sell short to sell short exempt; (E) sell short exempt to sell; and (F) sell short exempt to sell short.<sup>8</sup> Any other modification to an order, including an increase in the size of the order and/or price change, will result in such order losing time priority as compared to other orders in the MIAX Pearl Equities Book and the timestamp for such order being revised to reflect the time of the modification.

The following illustrates how the order from the above example would be handled if later modified via a Cancel/Replace message that results in a loss in time priority. As illustrated in the above example, the displayed Limit Order to buy established a new NBBO of \$10.01 by \$10.05 upon entry and now continues to rest on the MIAX Pearl Equities Book at \$10.01. Assume the away BBO is \$10.00 by \$10.05 and a User submit a Cancel/Replace message to change the order's limit price to \$9.99. This would result in the away BBO of \$10.00 by \$10.05 becoming the new NBBO. The displayed Limit Order resting on the MIAX Pearl Equities Book would,

---

<sup>8</sup> See, e.g., Securities Exchange Act Release No. 93506 (November 2, 2021), 86 FR 61796 (November 8, 2021) (SR-PEARL-2021-35).

therefore, be cancelled because its price is inferior to the new NBB of \$10.00 and would no longer set the NBB.<sup>9</sup>

Users would need to instruct the Exchange upon entry on an order-by-order basis to cancel their order as proposed herein. The proposed functionality would be entirely optional and, absent an instruction from the User on entry to the contrary, a displayed Limit Order that does not establish a new NBBO as described above would not be cancelled by the Exchange. Users may choose to use the proposed functionality based on their own business needs and trading behavior.

All Users would be notified that their displayed Limit Order or modification to such order did not establish a new NBBO, regardless of whether a User instructs the Exchange to cancel a displayed Limit Order when it does not establish a new NBBO as described herein. Users that do not inform the Exchange upon entry to cancel such order may choose to cancel that order on their own and submit a new order in an attempt to then establish a new NBBO and qualify for the upcoming NBBO Setter Plus program.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.<sup>10</sup> Specifically, the proposal is consistent with Section 6(b)(5) of the Act<sup>11</sup> because it would 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, and, in general, protect investors and the public interest

---

<sup>9</sup> However, such order would not have been cancelled by the Exchange if its new limit price was \$10.02.

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

because it would provide Users optional functionality to assist them in managing their order flow and attempts to establish a new NBBO. The proposal further remove impediments to, and perfect the mechanism of, a free and open market and a national market system because Users may instruct the Exchange upon entry to cancel their displayed Limit Order or modification to such order that did not establish a new NBBO so that they may then submit a new order to again attempt to establish a new NBBO and qualify for the upcoming NBBO Setter Plus program. The proposal would also promote just and equitable principles of trade because it would facilitate a User's ability to enter orders that establish a new NBBO by enabling them to enter a new order in a timelier manner and not submit a separate cancellation message prior to entering the new order. The proposed optional functionality should encourage more aggressively priced displayed liquidity on the Exchange, thereby, improving price discovery and potentially attracting additional contra-side order flow.

As stated above, the proposed functionality would be entirely optional and, absent an instruction from the User to the contrary, a displayed Limit Order that does not establish a new NBBO as described above would not be cancelled by the Exchange. Users may choose to not use the proposed functionality and make their own decision whether to cancel the order on their own based on their business needs and trading behavior.

Lastly, the exchange notes that at least one other exchange that currently offers a similar NBBO Setter Plus program also provides for the ability to instruct the exchange to cancel an order if it does not establish the NBBO.<sup>12</sup>

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

---

<sup>12</sup> See reason code 240 on page 110 of the [NYSE Pillar Gateway Binary Protocol Specifications](#), dated June 27, 2023, available at [NYSE Pillar Gateway Binary Protocol Specification.pdf](#). See also Securities Exchange Act Release No. 89754 (September 2, 2020), 85 FR 55550 (September 8, 2020) (SR-NYSE-2020-71). Functionality to cancel the order if it does not set the NBBO was not included in SR-NYSE-2020-71.

The Exchange does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The proposed rule change would not have any impact on intramarket competition because it would be available to all Users and Users may choose to use the proposed functionality based on their own business needs or trading behavior. The proposal may enhance intermarket competition because it would allow the Exchange to better compete with at least one other exchange that currently offers the ability to instruct the exchange to cancel an order if it does not establish the NBBO as part of its own NBBO Setter Plus program.<sup>13</sup> The proposal may also improve the Exchange's competitive position by encouraging the entry of displayed orders priced more aggressively than the NBBO, improving the Exchange's market quality, and attracting additional liquidity. The proposal responds to the current competitive environment where order flow providers have a choice of where to direct liquidity-providing orders by providing optional functionality to facilitate the entry of aggressively priced displayed liquidity on 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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act<sup>14</sup> and

---

<sup>13</sup> Id.

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

Rule 19b-4(f)(6)<sup>15</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 (<https://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-2023-39 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-2023-39. This file number should be included on the subject line if email is used. To help the Commission process and

---

<sup>15</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-PEARL-2023-39 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

---

<sup>16</sup> 17 CFR 200.30-3(a)(12).

New text is underlined;  
Deleted text is in [brackets]

## MIAX PEARL, LLC Rules

\*\*\*\*\*

### Rule 2614. Orders and Order Instructions

\*\*\*\*\*

#### (a) General Order Types.

(1) **Limit Order.** An order to buy or sell a stated amount of a security at a specified price or better. A “marketable” Limit Order to buy (sell) will trade with all orders to sell (buy) priced at or below (above) the PBO (PBB) for the security. Once no longer marketable, the Limit Order will be ranked on the MIAX Pearl Equities Book pursuant to Exchange Rule 2616. An incoming Limit Order may be designated as ISO.

(A) – (I) (No change).

(J) **NBBO Cancel Option.** On an order-by-order basis, a User may elect that the System cancel a displayed Limit Order to buy (sell) that does not establish a new NBB (NBO) upon entry or when modified via a Cancel/Replace message in accordance with Exchange Rule 2614(e) and such modification results in the order losing time priority in accordance with Exchange Rule 2616(a)(5).

\*\*\*\*\*