

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-82255; File No. SR-PEARL-2017-20)

December 11, 2017

Self-Regulatory Organizations; MIAX PEARL LLC; Notice of Filing of Amendment No. 2 to a Proposed Rule Change to Amend the Fee Schedule

On May 1, 2017, MIAX PEARL, LLC (“MIAX PEARL” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to adopt a fee schedule to establish the fees for Industry Members related to the National Market System Plan Governing the Consolidated Audit Trail (“CAT NMS Plan”). The proposed rule change was published in the Federal Register for comment on May 19, 2017.³ The Commission received seven comment letters on the proposed rule change,⁴ and a response to comments from

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 80676 (May 15, 2017), 82 FR 23083 (May 19, 2017) (“Original Proposal”).

⁴ Since the CAT NMS Plan Participants’ proposed rule changes to adopt fees to be charged to Industry Members to fund the consolidated audit trail are substantively identical, the Commission is considering all comments received on the proposed rule changes regardless of the comment file to which they were submitted. See text accompanying note 13 infra, for a list of the CAT NMS Plan Participants. See Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, to Brent J. Fields, Secretary, Commission (dated June 6, 2017), available at: <https://www.sec.gov/comments/sr-batsbzx-2017-38/batsbzx201738-1788188-153228.pdf>; Letter from Patricia L. Cerny and Steven O’Malley, Compliance Consultants, to Brent J. Fields, Secretary, Commission (dated June 12, 2017), available at: <https://www.sec.gov/comments/sr-cboe-2017-040/cboe2017040-1799253-153675.pdf>; Letter from Daniel Zinn, General Counsel, OTC Markets Group Inc., to Eduardo A. Aleman, Assistant Secretary, Commission (dated June 13, 2017), available at: <https://www.sec.gov/comments/sr-finra-2017-011/finra2017011-1801717-153703.pdf>; Letter from Joanna Mallers, Secretary, FIA Principal Traders Group, to Brent J. Fields, Secretary, Commission (dated June 22, 2017), available at: <https://www.sec.gov/comments/sr-cboe-2017-040/cboe2017040-1819670-154195.pdf>; Letter from Stuart J. Kaswell, Executive Vice President and Managing Director, General Counsel, Managed Funds Association, to Brent J. Fields, Secretary, Commission (dated June 23, 2017), available at: <https://www.sec.gov/comments/sr-finra-2017->

the Participants.⁵ On June 30, 2017, the Commission temporarily suspended and initiated proceedings to determine whether to approve or disapprove the proposed rule change.⁶ The Commission thereafter received seven comment letters,⁷ and a response to comments from the Participants.⁸ On November 7, 2017, the Exchange filed Amendment No. 1 to the proposed rule

[011/finra2017011-1822454-154283.pdf](https://www.sec.gov/comments/sr-batsedgx-2017-22/batsedgx201722-154443.pdf); and Letter from Suzanne H. Shatto, Investor, to Commission (dated June 27, 2017), available at: <https://www.sec.gov/comments/sr-batsedgx-2017-22/batsedgx201722-154443.pdf>. The Commission also received a comment letter which is not pertinent to these proposed rule changes. See Letter from Christina Crouch, Smart Ltd., to Brent J. Fields, Secretary, Commission (dated June 5, 2017), available at: <https://www.sec.gov/comments/sr-batsbx-2017-38/batsbx201738-1785545-153152.htm>.

⁵ See Letter from CAT NMS Plan Participants to Brent J. Fields, Secretary, Commission (dated June 29, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-1832632-154584.pdf>.

⁶ See Securities Exchange Act Release No. 81067 (June 30, 2017), 82 FR 31656 (July 7, 2017).

⁷ See Letter from W. Hardy Callcott, Partner, Sidley Austin LLP, to Brent J. Fields, Secretary, Commission (dated July 27, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2148338-157737.pdf>; Letter from Kevin Coleman, General Counsel and Chief Compliance Officer, Belvedere Trading LLC, to Brent J. Fields, Secretary, Commission (dated July 28, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2148360-157740.pdf>; Letter from Joanna Mallers, Secretary, FIA Principal Traders Group, to Brent J. Fields, Secretary, Commission (dated July 28, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2151228-157745.pdf>; Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, to Brent J. Fields, Secretary, Commission (dated July 28, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2150977-157744.pdf>; Letter from Stuart J. Kaswell, Executive Vice President and Managing Director, General Counsel, Managed Funds Association, to Brent J. Fields, Secretary, Commission (dated July 28, 2017), available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2150818-157743.pdf>; Letter from John Kinahan, Chief Executive Officer, Group One Trading, L.P., to Brent J. Fields, Secretary, Commission (dated August 10, 2017), available at: <https://www.sec.gov/comments/sr-finra-2017-011/finra2017011-2214568-160619.pdf>; Letter from Joseph Molluso, Executive Vice President and CFO, Virtu Financial, to Brent J. Fields, Commission (dated August 18, 2017), available at: <https://www.sec.gov/comments/sr-finra-2017-011/finra2017011-2238648-160830.pdf>.

⁸ See Letter from Michael Simon, Chair, CAT NMS Plan Operating Committee, to Brent J. Fields, Commission, Secretary (dated November 2, 2017), available at

change.⁹ On November 9, 2017, the Commission extended the time period within which to approve the proposed rule change or disapprove the proposed rule change to January 14, 2018.¹⁰ On December 1, 2017, the Exchange filed Amendment No. 2 to the proposed rule change, as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments from interested persons on Amendment No. 2.

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

On May 1, 2017, MIAX PEARL, LLC (“MIAX PEARL” or “Exchange”) filed with the Securities and Exchange Commission (“Commission” or “SEC”) a proposed rule change SR-PEARL-2017-20 (the “Original Proposal”),¹¹ pursuant to which the Exchange proposed to adopt a fee schedule to establish the fees for Industry Members related to the National Market System Plan Governing the Consolidated Audit Trail (the “CAT NMS Plan” or “Plan”).¹² On November 7, 2017, the Exchange filed an amendment to the Original Proposal (“First Amendment”). The Exchange files this proposed rule change (the “Second Amendment”) to amend the Original Proposal as amended by the First Amendment.

<https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-2674608-161412.pdf>.

⁹ Amendment No. 1 to the proposed rule change replaced and superseded the Original Proposal in its entirety. See Securities Exchange Act Release No. 82254 (December 11, 2017).

¹⁰ See Securities Exchange Act Release No. 82049 (November 9, 2017), 82 FR 53549 (November 16, 2017).

¹¹ See Securities Exchange Act Release No. 80676 (May 15, 2017), 82 FR 23083 (May 19, 2017)(SR-PEARL-2017-20).

¹² Unless otherwise specified, capitalized terms used in this fee filing are defined as set forth herein, the CAT Compliance Rule Series, in the CAT NMS Plan, or the Original Proposal.

The text of the proposed rule change is available on the Exchange's website at <http://www.miaxoptions.com/rule-filings/pearl>, at MIAX'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

BOX Options Exchange LLC, Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe Exchange, Inc., Chicago Stock Exchange, Inc., Financial Industry Regulatory Authority, Inc. ("FINRA"), Investors' Exchange LLC, Miami International Securities Exchange, LLC, MIAX PEARL, LLC, NASDAQ BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, NASDAQ PHLX LLC, The NASDAQ Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc. and NYSE National, Inc.¹³ (collectively, the "Participants") filed with the Commission, pursuant to Section 11A of the Exchange Act¹⁴ and

¹³ Note that Bats BYX Exchange, Inc., Bats BZX Exchange, Inc., Bats EDGA Exchange, Inc., Bats EDGX Exchange, Inc., LLC, C2 Options Exchange, Incorporated, and Chicago Board Options Exchange, Incorporated, have been renamed Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe Exchange, Inc., respectively.

¹⁴ 15 U.S.C. 78k-1.

Rule 608 of Regulation NMS thereunder,¹⁵ the CAT NMS Plan.¹⁶ The Participants filed the Plan to comply with Rule 613 of Regulation NMS under the Exchange Act. The Plan was published for comment in the Federal Register on May 17, 2016,¹⁷ and approved by the Commission, as modified, on November 15, 2016.¹⁸ The Plan is designed to create, implement and maintain a consolidated audit trail (“CAT”) that would capture customer and order event information for orders in NMS Securities and OTC Equity Securities, across all markets, from the time of order inception through routing, cancellation, modification, or execution in a single consolidated data source. The Plan accomplishes this by creating CAT NMS, LLC (the “Company”), of which each Participant is a member, to operate the CAT.¹⁹ Under the CAT NMS Plan, the Operating Committee of the Company (“Operating Committee”) has discretion to establish funding for the Company to operate the CAT, including establishing fees that the Participants will pay, and establishing fees for Industry Members that will be implemented by the Participants (“CAT Fees”).²⁰ The Participants are required to file with the SEC under Section 19(b) of the Exchange Act any such CAT Fees applicable to Industry Members that the Operating Committee approves.²¹ Accordingly, the Exchange submitted the Original Proposal to propose the

¹⁵ 17 CFR 242.608.

¹⁶ See Letter from the Participants to Brent J. Fields, Secretary, Commission, dated September 30, 2014; and Letter from Participants to Brent J. Fields, Secretary, Commission, dated February 27, 2015. On December 24, 2015, the Participants submitted an amendment to the CAT NMS Plan. See Letter from Participants to Brent J. Fields, Secretary, Commission, dated December 23, 2015.

¹⁷ Securities Exchange Act Rel. No. 77724 (Apr. 27, 2016), 81 Fed. Reg. 30614 (May 17, 2016).

¹⁸ Securities Exchange Act Rel. No. 79318 (Nov. 15, 2016), 81 Fed. Reg. 84696 (Nov. 23, 2016) (“Approval Order”).

¹⁹ The Plan also serves as the limited liability company agreement for the Company.

²⁰ Section 11.1(b) of the CAT NMS Plan.

²¹ Id.

Consolidated Audit Trail Funding Fees, which would require Industry Members that are Exchange members to pay the CAT Fees determined by the Operating Committee.

The Commission published the Original Proposal for public comment in the Federal Register on May 19, 2017,²² and received comments in response to the Original Proposal or similar fee filings by other Participants.²³ On June 30, 2017, the Commission suspended, and instituted proceedings to determine whether to approve or disapprove, the Original Proposal.²⁴ The Commission received seven comment letters in response to those proceedings.²⁵

In response to the comments on the Original Proposal, the Operating Committee determined to make the following changes to the funding model: (1) add two additional CAT Fee tiers for Equity Execution Venues; (2) discount the market share of Execution Venue ATSs exclusively trading OTC Equity Securities as well as the market share of the FINRA over-the-counter reporting facility (“ORF”) by the average shares per trade ratio between NMS Stocks and OTC Equity Securities (calculated as 0.17% based on available data from the second quarter of 2017) when calculating the market share of Execution Venue ATS exclusively trading OTC Equity Securities and FINRA; (3) discount Options Market Maker quotes by the trade to quote

²² See supra. note 3.

²³ For a summary of comments, see generally Securities Exchange Act Rel. No. 81067 (June 30, 2017), 82 Fed. Reg. 31656 (July 7, 2017) (“Suspension Order”).

²⁴ Suspension Order.

²⁵ See Letter from Stuart J. Kaswell, Executive Vice President, Managing Director and General Counsel, Managed Funds Association, to Brent J. Fields, Secretary, SEC (July 28, 2017); Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, to Brent J. Fields, Secretary, SEC (July 28, 2017); Joanna Mallers, Secretary, FIA Principal Traders Group, to Brent J. Fields, Secretary, SEC (July 28, 2017); Letter from Kevin Coleman, General Counsel & Chief Compliance Officer, Belvedere Trading LLC, to Brent J. Fields, Secretary, SEC (July 28, 2017); Letter from W. Hardy Callcott, Sidley Austin LLP, to Brent J. Fields, Secretary, SEC (July 27, 2017); Letter from John Kinahan, Chief Executive Officer, Group One Trading, L.P., to Brent J. Fields, Secretary, SEC (Aug. 10, 2017); and Letter from Joseph Molluso, Executive Vice President, Virtu Financial, to Brent J. Fields, Secretary, SEC (Aug. 18, 2017).

ratio for options (calculated as 0.01% based on available data for June 2016 through June 2017) when calculating message traffic for Options Market Makers; (4) discount equity market maker quotes by the trade to quote ratio for equities (calculated as 5.43% based on available data for June 2016 through June 2017) when calculating message traffic for equity market makers; (5) decrease the number of tiers for Industry Members (other than the Execution Venue ATSS) from nine to seven; (6) change the allocation of CAT costs between Equity Execution Venues and Options Execution Venues from 75%/25% to 67%/33%; (7) adjust tier percentages and recovery allocations for Equity Execution Venues, Options Execution Venues and Industry Members (other than Execution Venue ATSS); (8) focus the comparability of CAT Fees on the individual entity level, rather than primarily on the comparability of affiliated entities; (9) commence invoicing of CAT Reporters as promptly as possible following the latest of the operative date of the Consolidated Audit Trail Funding Fees for each of the Participants and the operative date of the CAT NMS Plan amendment adopting CAT Fees for Participants; and (10) require the proposed fees to automatically expire two years from the operative date of the CAT NMS Plan amendment adopting CAT Fees for Participants. On November 8, 2017, the Exchange filed the First Amendment and proposed to amend the Original Proposal to reflect these changes.

The Exchange submits this Second Amendment to revise the proposal as set forth in the First Amendment to discount the OTC Equity Securities market share of all Execution Venue ATSS trading OTC Equity Securities, rather than applying the discount solely to those Execution Venue ATSS that exclusively trade OTC Equity Securities, when calculating the market share of Execution Venue ATS trading OTC Equity Securities. As discussed in the First Amendment:

The Operating Committee determined to discount the market share of Execution Venue ATSS exclusively trading OTC Equity Securities as well as the market share of the FINRA ORF in recognition of the different trading characteristics of the OTC Equity

Securities market as compared to the market in NMS Stocks. Many OTC Equity Securities are priced at less than one dollar—and a significant number at less than one penny—per share and low-priced shares tend to trade in larger quantities. Accordingly, a disproportionately large number of shares are involved in transactions involving OTC Equity Securities versus NMS Stocks. Because the proposed fee tiers are based on market share calculated by share volume, Execution Venue ATSS exclusively trading OTC Equity Securities and FINRA would likely be subject to higher tiers than their operations may warrant.²⁶

The Operating Committee believes that this argument applies equally to both Execution Venue ATSS exclusively trading OTC Equity Securities and to Execution Venue ATSS that trade OTC Equity Securities as well as other securities. Accordingly, the Exchange proposes to amend paragraph (b)(2) of the Consolidated Audit Trail Funding Fees to apply the discount to all Execution Venue ATSS trading OTC Equity Securities. Specifically, the Exchange proposes to change the parenthetical regarding the OTC Equity Securities discount in paragraph (b)(2) of the proposed fee schedule from “with a discount for Equity ATSS exclusively trading OTC Equity Securities based on the average shares per trade ratio between NMS Stocks and OTC Equity Securities” to “with a discount for OTC Equity Securities market share of Equity ATSS trading OTC Equity Securities based on the average shares per trade ratio between NMS Stocks and OTC Equity Securities.”

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with the provisions of Section 6(b)(5) of the Act,²⁷ which require, among other things, that Exchange

²⁶ See SR-PEARL-2017-20 Amendment No. 1 filed November 7, 2017.

²⁷ 15 U.S.C. 78f(b)(5).

rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and not designed to permit unfair discrimination between customers, issuers, brokers and dealers, and Section 6(b)(4) of the Act,²⁸ which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The Exchange believes that the proposed rule change is consistent with the Act, and that the proposed fees are reasonable, equitably allocated and not unfairly discriminatory. In particular, the Exchange believes that the proposed rule change would treat all Equity ATSS trading OTC Equity Securities in a comparable manner when calculating applicable fees. In addition, the fee structure takes into consideration distinctions in securities trading operations of CAT Reporters, including all ATSS trading OTC Equity Securities.

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

Section 6(b)(8) of the Act²⁹ requires that Exchange rules not impose any burden on competition that is not necessary or appropriate. The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. As previously described, the Exchange believes that the proposed rule change fairly and equitably allocates costs among CAT Reporters. In particular, the proposed fee schedule is structured to impose comparable fees on similarly situated CAT Reporters. The Exchange believes that the proposed change would treat all Equity ATSS trading OTC Equity Securities in a comparable manner when calculating applicable fees. In addition, the fee structure takes into consideration distinctions in securities trading operations of CAT Reporters, including all ATSS trading OTC Equity Securities. Moreover, the Operating

²⁸ 15 U.S.C. 78f(b)(4).

²⁹ 15 U.S.C. 78f(b)(8).

Committee believes that the proposed change addresses certain competitive concerns raised by commenters related to ATSS trading OTC Equity Securities.

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. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal, as amended by Amendment No. 1 and Amendment No. 2, 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 e-mail to rule-comments@sec.gov. Please include File Number SR-PEARL-2017-20 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-PEARL-2017-20. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those

that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-PEARL-2017-20, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁰

Robert W. Errett
Deputy Secretary

³⁰ 17 CFR 200.30-3(a)(12).