

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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Form 19b-4 Information *

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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 *

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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 Advance Notice by Clearing Agencies *

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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, security-based swap submission, or advance notice 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

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Exhibit Sent As Paper Document

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 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

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 4 - Marked Copies

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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

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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

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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”)¹ and Rule 19b-4 thereunder,² is filing with the Securities and Exchange Commission (the “Commission”) a proposed rule change to amend Exchange Rule 2616, Priority of Orders, to provide that an order will receive a new timestamp when its position is modified via a Cancel/Replace message during a Short Sale Period.³

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 MIAX Pearl Board of Directors on January 28, 2021. Exchange staff will advise the Board of Directors of any action taken pursuant to delegated authority.

Questions and comments on the proposed rule change may be directed to Chris Solgan, Vice President and Senior Counsel, at (609) 423-9414.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Exchange Rule 2614(g)(3)(A) defines a Short Sale Period as the time when “a short sale price test restriction under Rule 201 of Regulation SHO” is in effect. 17 CFR 242.201.

a. Purpose

The purpose of the proposed rule change is to amend Exchange Rule 2616, Priority of Orders, to provide that an order will receive a new timestamp when its position is modified via a Cancel/Replace message during a Short Sale Period. The proposed rule change applies to orders in equity securities traded on the Exchange's equity trading platform (referred to herein as "MIAX Pearl Equities").

Exchange Rule 2614(e)(3) provides that only the price, sell long, sell short, or short exempt indicator, Max Floor of an order with a Reserve Quantity,⁴ and size terms of the order may be changed by a Cancel/Replace Message. If a User desires to change any other terms of an existing order the existing order must be cancelled and a new order must be entered. An order receives a new timestamp when that order receives a new price, its size is increased, or is cancelled in full and replaced by a new order. In addition, an order also receives a new timestamp when it is repriced pursuant to Exchange Rule 2614(g).⁵ For example, an order may be repriced pursuant to the Exchange's Display Price Sliding Process if it would be displayed at a price that would lock or cross the Protected Best Bid or Offer ("PBBO") of an away Trading Center.⁶ In such case, that order would receive a new timestamp.

Exchange Rule 2616(a)(5) currently provides that in the event an order has been cancelled or replaced in accordance with Exchange Rule 2614(e), such order only retains its timestamp if such modification involves a decrease in the size of the order, a change to the

⁴ See Exchange Rule 2614(c)(8).

⁵ See, e.g., Exchange Rule 2614(g) ("Repricing Processes to Comply with Regulatory Requirements").

⁶ See Exchange Rule 2614(g)(1) ("Display Price Sliding Process").

Max Floor of an order with a Reserve Quantity, or 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. 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 Book⁷ and the timestamp for such order being revised to reflect the time of the modification.

The Exchange now proposes to provide that an order will also receive a new timestamp in one additional scenario where the order may not receive a new price. As proposed, an order would also receive a new timestamp when its position is changed via a Cancel/Replace message during a Short Sale Period. Specifically, the Exchange proposes to amend Exchange Rule 2616(a)(5) to provide that a change in position via a Cancel/Replace message 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 during a Short Sale Period will result in a change to the order's timestamp. Such modification to an order during a Short Sale Period 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 Exchange does not propose to change an order's timestamp where a position change is made via a Cancel/Replace message when a Short Sale Period is not in effect.

The need for proposed rule change became apparent as a result of technology

⁷ Exchange Rule 1901 defines the term "MIAX Pearl Equities Book" as "the electronic book of orders in equity securities maintained by the System."

changes related to the Exchange's recent implementation of the Reserve Quantity and Minimum Execution Quantity⁸ order instructions.⁹ As a result of the above technology changes and to ensure the ongoing resiliency of the System,¹⁰ the reevaluation of an order for execution as a result of a change to the order's position via a Cancel/Replace message during a Short Sale Period will result in that order receiving a new timestamp, including where the order's price remains unchanged.

The Exchange notes that an order will always receive a new timestamp where the order is re-priced, including where that order is re-priced pursuant to the Exchange's Short Sale Price Sliding Process due to a change in position via a Cancel/Replace message.¹¹ However, pursuant to the proposed rule change, a position change via a Cancel/Replace message during a Short Sale Period would now always result in the order receiving a new timestamp, regardless of whether the re-evaluation of the order results in the order being re-priced.

The proposed rule change reflects a necessary technology change that would ensure continued System resiliency and stability. The Exchange notes that the proposed rule change is designed to address a discrete and potentially limited scenario that a Short Sale Period must be in effect when the position change is made via a Cancel/Replace message.

⁸ See Exchange Rule 2614(c)(7).

⁹ See MIAAX Pearl Equities - Reminder: Announces Further Expansion of its Equity Trading Platform with the Launch of the Minimum Execution Quantity and Reserve Quantity Order Instructions; Both Available July 1st 2021, available at <https://www.miaaxoptions.com/alerts/2021/06/15/miax-pearl-equities-reminder-announces-further-expansion-its-equity-trading> (June 15, 2021).

¹⁰ The term "System" means the automated trading system used by the Exchange for the trading of securities. See Exchange Rule 100.

¹¹ See Exchange Rule 2614(g)(3) for a description of the Exchange's Short Sale Price Sliding Process.

If a Short Sale Period is not in effect, an order would retain its timestamp when its position is changed via a Cancel/Replace message. The proposed rule change is no different than where an order may receive a new timestamp when it is not re-priced, such as when an order's size is increased via a Cancel/Replace message or an order is cancelled in full and replaced with a new order. In both of these cases, the order would be provided a new timestamp and experience a loss in priority. The same would be true under the proposed rule change where an order would receive a new timestamp where its position is changed via a Cancel/Replace message during a Short Sale Period.

* * * * *

Lastly, the Exchange proposes to make two clarifying changes to Exchange Rules 2614(e)(3) and 2616(a)(5). First, the Exchange proposes to add the word "Cancel" before the word "Replace" in Exchange Rule 2614(e)(3). This change is to use consistent terminology when referring to Cancel/Replace messages in the Exchange's rules. Second, the Exchange proposes to clarify within Exchange Rule 2616(a)(5) that an order is being modified by the Cancel/Replace message. In part, Exchange Rule 2616(a)(5) states that "[i]n the event an order has been cancelled or replaced in accordance with Exchange Rule 2614(e) above, . . .". The Exchange proposes to replace the phrase "cancelled or replaced" in Exchange Rule 2616(a)(5) with "modified via a Cancel/Replace message." Doing so would clarify within Exchange Rule 2616(a)(5) that the order is being modified, rather than cancelled and replaced with a new order. Neither of the above changes amend the meaning or operation of either rule. They are simply intended to clarify each rule and to ensure the use of consistent terminology across the Exchange's rulebook.

b. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,¹² in general, and furthers the objectives of Section 6(b)(5),¹³ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The proposed rule change promotes just and equitable principles of trade because it is similar to other cases today where an order may lose priority when a modification is made via a Cancel/Replace message. For example, increasing the size of an order 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.¹⁴ The System also re-evaluates the order for execution when an Equity Member¹⁵ increases the size of an order via a Cancel/Replace message. The same is true for a position change made pursuant to Exchange Rule 2614(e) during a Short Sale Period. For example, should an order's position be changed from long to short during a Short Sale Period, that order would become subject to the price restrictions of Regulation SHO¹⁶ and the System would evaluate whether the order may be executed or re-priced pursuant to the Exchange's Short Sale Price Sliding Process.¹⁷ Under the

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ See Exchange Rule 2616(a)(5).

¹⁵ The term "Equity Member" is a Member authorized by the Exchange to transact business on MIAX Pearl Equities. See Exchange Rule 1901.

¹⁶ 17 CFR 242.201(1)(i).

¹⁷ Exchange Rule 2614(g)(3).

proposed rule change, this evaluation would result in the order receiving a new timestamp and loss in priority, even when that order is not re-priced. While the price of the order may not change, the position change during a Short Sale Period impacts whether the order is subject to the price restrictions of Regulation SHO and may or may not become eligible for execution. Therefore, like size change via a Cancel/Replace message may change the execution status of the order, the Exchange believes treating a position change made via a Cancel/Replace message in the same manner and updating the order's timestamp is reasonable and consistent with the Act because it also reflects a change in the execution status of the order.

Further, as stated above, Exchange Rule 2614(e)(3) provides that only the price, sell long, sell short, or short exempt indicator, Max Floor of an order with a Reserve Quantity, and size terms of the order may be changed by a Cancel/Replace Message. If a User desires to change any other terms of an existing order the existing order must be cancelled and a new order must be entered. This includes, for example, changes to the minimum quantity condition of an order with a Minimum Execution Quantity instruction.¹⁸ In such case, the existing order must be cancelled and new order entered with the revised minimum execution quantity. Like a position change during a Short Sale Period, the new order would be provided a new timestamp and re-evaluated for execution based on the revised minimum execution quantity. Therefore, the proposed rule change promotes just and equitable principles of trade because it is similar to existing exchange functionality.

The proposed rule change promotes just and equitable principles of trade because it is consistent with the other exchanges' treatment of position changes and their impact on the order's priority. For example, Investors Exchange LLC ("IEX") Rule 11.190(d)(4) does not

¹⁸ See Exchange Rule 2614(c)(7).

allow for a position change via a Cancel/Replace message and requires that if a “[u]ser desires to modify an invalid field on an order, the existing order must be canceled and a new order must be entered.”¹⁹ Therefore, on IEX, a market participant must enter a new order where it seeks to change that order’s position at all times, not just during a Short Sale Period. This is broader than the Exchange’s proposal which is limited to position changes during a Short Sale Period. On IEX, the new order would receive a new timestamp, resulting in a priority loss. In addition, The Nasdaq Stock Market, LLC (“Nasdaq”) Rule 4756(a)(3) provides that an order will be cancelled if the order’s position is “redesignated as short during a Short Sale Period and the order is not priced at a Permitted Price or higher under Nasdaq Rule 4763(e).” This would require the replacement of the original order with a new order and a new timestamp, resulting in a priority loss.²⁰ Therefore, the Exchange’s proposal is not novel and is similar to functionality provided for on other exchanges.

Unlike where an order retains its timestamp when a modification involves a decrease in the size of the order or a change to the Max Floor of an order with a Reserve Quantity, a change in the order’s position during a Short Sale Period triggers compliance with additional regulatory requirements. In such case, the Exchange must assess whether the order is priced or may be executed in accordance with Regulation SHO. For example, an order whose position is changed from long to short during a Short Sale Period may not be priced at or above the national best bid and may either need to be repriced pursuant to the Exchange’s Short Sale Price Sliding Process

¹⁹ See IEX Rule 11.190(d)(4) (stating that “Symbol, side, execution instruction, order type, and TIF are considered invalid fields. If a User attempts modify an invalid field by submitting a Replace Message, the order amendment will be rejected by the Exchange. If a User desires to modify an invalid field on an order, the existing order must be canceled and a new order must be entered”).

²⁰ See Nasdaq Rule 4756(a)(3).

or cancelled based on the Equity Member's instructions. Conversely, an order whose position is changed from short to long during a Short Sale Period would no longer be subject to the price restrictions of Regulation SHO and may now be eligible for execution or routing to an away market. An order marked short is not subject to the price restrictions of Regulation SHO when a Short Sale Period is not in effect. Therefore, allowing the order to retain its timestamp when a Short Sale Period is not in effect continues to promote just and equitable principles of trade because the execution status of the order remains unchanged.²¹

Notwithstanding the above, the proposed rule change also protects investors and the public interest because it does not change anything with regard to compliance with Regulation SHO, including Regulation SHO's order marking requirements and Equity Member's compliance with its applicable exceptions. Today, an Equity Member has the ability to modify their order's position via a Cancel/Replace message. The proposal does not change that. Today, Equity Members are required to mark their orders properly both upon entry and when modifying that order's position later via a Cancel/Replace message. This proposed rule change does not alter Equity Members obligations to continue to ensure that their orders are marked in accordance with the requirements of Regulation SHO and Exchange Rule 2623²² at all times, including when changing the order's position via a Cancel/Replace message when a Short Sale

²¹ This is also consistent with other exchanges' rules. See, e.g., Members Exchange, Inc. Rule 11.9(a)(4) and Cboe EDGX Exchange, Inc. Rule 11.9(a)(4).

²² Exchange Rule 26123 provides that "[a]ll short sale orders shall be identified as "short" or "short exempt" when entered into the System. If marked "short exempt," the Exchange shall execute, display and/or route a short sale order marked "short exempt" without regard to any short sale price test restriction in effect during a Short Sale Period, as defined in Exchange Rule 2614(g)(3)(A). The Exchange relies on the marking of an order as "short exempt" when handling such order, and thus, it is the entering Member's responsibility, not the Exchange's responsibility, to comply with the requirements of Regulation SHO relating to marking of orders as "short exempt." Exchange Rule 2603 also requires that Equity Members input accurate information into the System.

Period is or is not in effect. As they are required to do today, Equity Members must also continue to ensure that their order complies with any applicable exemption from Regulation SHO that they seek to avail themselves of, not only at the time of entry, but also at the time they change the order's position via a Cancel/Replace message.²³ Again, nothing in this proposal alters a Member's obligations under Regulation SHO. The Exchange notes that the proposed rule change removes impediments to and perfects the mechanism of a free and open market and a national market system because it is designed to address a discrete and potentially limited scenario of a Short Sale Period being in effect when the a position change is made via a Cancel/Replace message. If a Short Sale Period is not in effect, an order would retain its timestamp when its position is changed via a Cancel/Replace message. This proposed rule change is narrowly focused to address only where an order would lose priority where its position is changed via a Cancel/Replace message during a Short Sale Period.

The proposed rule change would also remove impediments to and promote just and equitable principles of trade because it reflects a necessary technology change that would ensure continued System resiliency and stability. As a national securities exchange, the Exchange is subject to Regulation Systems Compliance and Integrity ("Reg. SCI").²⁴ Reg. SCI Rule 1001(a) requires that the Exchange establish, maintain, and enforce written policies and procedures reasonably designed to ensure (among other things) that its Reg. SCI systems have levels of capacity adequate to maintain the Exchange's operational capability and promote the maintenance of fair and orderly markets.²⁵ The proposed rule change is necessary to ensure the

²³ The Exchange will continue to surveil for compliance with Exchange Rules 2623 and 2603 as well as Regulation SHO.

²⁴ 17 CFR 242.1000-1007.

²⁵ 17 CFR 242.1001(a).

ongoing resiliency of the Exchange's infrastructure and underling technology to ensure the Exchange continues to satisfy its requirements under Reg. SCI. The Exchange takes pride in the reliability and availability of its System. The proposed rule change is necessary due to technological complexity and to continue to ensure the System operates consistent with the Exchange's rules and in accordance with the Exchange's obligations under Reg. SCI.

Lastly, the proposed clarifying changes to Exchange Rules 2614(e)(3) and 2616(a)(5) removes impediments to and perfect a free and open market system because they simply clarify each rule and ensure the use of consistent terminology across the Exchange's rulebook. Neither of these changes amend the meaning or operation of either rule.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not being proposed for competitive reasons. As discussed above, the need for the proposed rule change became apparent when making technology changes related to the Exchange's upcoming implementation of the Reserve Quantity and Minimum Execution Quantity order instructions.²⁶ Further, this proposed rule change to cause an order to lose priority when the order's position is changed during a Short Sale Period via a Cancel/Replace message is no different than where an Equity Member seek to change the position of their order by cancelling that order and re-submitting a new order. In each case, the order will receive a new timestamp at the time the position was changed via a cancel or replace message.

Adjusting the order's timestamp due to a position change via a Cancel/Replace message during a Short Sale Period does not impose any burden on inter-market competition that is not

²⁶ See supra note 9.

necessary or appropriate in furtherance of the Act. Equity Members may take into consideration that their order may experience a loss in priority when they change their order's position during a Short Sale Period when determining where to send their order for execution. Equity Members are free to consider this change as part of their overall experience on the Exchange, including the quality of executions and other functionality offerings, which are part of their order routing decisions.

Lastly, adjusting the order's timestamp due to a position change via a Cancel/Replace message during a Short Sale Period does not also impose any burden on intra-market competition that is not necessary or appropriate in furtherance of the Act because it is similar to functionality on other exchanges.²⁷ Also, like above for intra-market competition, Equity Members may take into consideration that their order may experience a loss in priority when they change their order's position during a Short Sale Period when determining where to send their order for execution. Equity Members who make position changes during a Short Sale Period may consider the potential that their order may lose priority and may choose to price their orders more aggressively.

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)**

Not applicable.

²⁷ See supra notes 19 and 20.

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.

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 1SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-PEARL-2021-35)

_____, 2021

Self-Regulatory Organizations: Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by MIAX PEARL, LLC to Amend Exchange Rule 2616, Priority of Orders

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on _____, 2021, 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 is filing a proposal to amend Exchange Rule 2616, Priority of Orders, to provide that an order will receive a new timestamp when its position is modified via a Cancel/Replace message during a Short Sale Period.³

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Exchange Rule 2614(g)(3)(A) defines a Short Sale Period as the time when “a short sale price test restriction under Rule 201 of Regulation SHO” is in effect. 17 CFR 242.201.

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 purpose of the proposed rule change is to amend Exchange Rule 2616, Priority of Orders, to provide that an order will receive a new timestamp when its position is modified via a Cancel/Replace message during a Short Sale Period. The proposed rule change applies to orders in equity securities traded on the Exchange's equity trading platform (referred to herein as "MIAX Pearl Equities").

Exchange Rule 2614(e)(3) provides that only the price, sell long, sell short, or short exempt indicator, Max Floor of an order with a Reserve Quantity,⁴ and size terms of the order may be changed by a Cancel/Replace Message. If a User desires to change any other terms of an existing order the existing order must be cancelled and a new order must be entered. An order receives a new timestamp when that order receives a new price, its size is increased, or is cancelled in full and replaced by a new order. In addition, an order also receives a new timestamp when it is repriced pursuant to Exchange Rule 2614(g).⁵ For example, an order may be repriced pursuant to the Exchange's Display Price Sliding Process if it would be displayed at a price that would lock or cross the Protected Best Bid or

⁴ See Exchange Rule 2614(c)(8).

⁵ See, e.g., Exchange Rule 2614(g) ("Repricing Processes to Comply with Regulatory Requirements").

Offer (“PBBO”) of an away Trading Center.⁶ In such case, that order would receive a new timestamp.

Exchange Rule 2616(a)(5) currently provides that in the event an order has been cancelled or replaced in accordance with Exchange Rule 2614(e), 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 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. 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 Book⁷ and the timestamp for such order being revised to reflect the time of the modification.

The Exchange now proposes to provide that an order will also receive a new timestamp in one additional scenario where the order may not receive a new price. As proposed, an order would also receive a new timestamp when its position is changed via a Cancel/Replace message during a Short Sale Period. Specifically, the Exchange proposes to amend Exchange Rule 2616(a)(5) to provide that a change in position via a Cancel/Replace message 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 during a Short Sale Period will result in a change to the order’s timestamp. Such modification to an order during a Short Sale Period will result in such

⁶ See Exchange Rule 2614(g)(1) (“Display Price Sliding Process”).

⁷ Exchange Rule 1901 defines the term “MIAX Pearl Equities Book” as “the electronic book of orders in equity securities maintained by the System.”

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 Exchange does not propose to change an order's timestamp where a position change is made via a Cancel/Replace message when a Short Sale Period is not in effect.

The need for proposed rule change became apparent as a result of technology changes related to the Exchange's recent implementation of the Reserve Quantity and Minimum Execution Quantity⁸ order instructions.⁹ As a result of the above technology changes and to ensure the ongoing resiliency of the System,¹⁰ the reevaluation of an order for execution as a result of a change to the order's position via a Cancel/Replace message during a Short Sale Period will result in that order receiving a new timestamp, including where the order's price remains unchanged.

The Exchange notes that an order will always receive a new timestamp where the order is re-priced, including where that order is re-priced pursuant to the Exchange's Short Sale Price Sliding Process due to a change in position via a Cancel/Replace message.¹¹ However, pursuant to the proposed rule change, a position change via a Cancel/Replace message during a Short Sale Period would now always result in the order receiving a new timestamp, regardless of whether the re-evaluation of the order results in the order being re-

⁸ See Exchange Rule 2614(c)(7).

⁹ See MIAX Pearl Equities - Reminder: Announces Further Expansion of its Equity Trading Platform with the Launch of the Minimum Execution Quantity and Reserve Quantity Order Instructions; Both Available July 1st 2021, available at <https://www.miaxoptions.com/alerts/2021/06/15/miax-pearl-equities-reminder-announces-further-expansion-its-equity-trading> (June 15, 2021).

¹⁰ The term "System" means the automated trading system used by the Exchange for the trading of securities. See Exchange Rule 100.

¹¹ See Exchange Rule 2614(g)(3) for a description of the Exchange's Short Sale Price Sliding Process.

priced.

The proposed rule change reflects a necessary technology change that would ensure continued System resiliency and stability. The Exchange notes that the proposed rule change is designed to address a discrete and potentially limited scenario that a Short Sale Period must be in effect when the position change is made via a Cancel/Replace message. If a Short Sale Period is not in effect, an order would retain its timestamp when its position is changed via a Cancel/Replace message. The proposed rule change is no different than where an order may receive a new timestamp when it is not re-priced, such as when an order's size is increased via a Cancel/Replace message or an order is cancelled in full and replaced with a new order. In both of these cases, the order would be provided a new timestamp and experience a loss in priority. The same would be true under the proposed rule change where an order would receive a new timestamp where its position is changed via a Cancel/Replace message during a Short Sale Period.

* * * * *

Lastly, the Exchange proposes to make two clarifying changes to Exchange Rules 2614(e)(3) and 2616(a)(5). First, the Exchange proposes to add the word "Cancel" before the word "Replace" in Exchange Rule 2614(e)(3). This change is to use consistent terminology when referring to Cancel/Replace messages in the Exchange's rules. Second, the Exchange proposes to clarify within Exchange Rule 2616(a)(5) that an order is being modified by the Cancel/Replace message. In part, Exchange Rule 2616(a)(5) states that "[i]n the event an order has been cancelled or replaced in accordance with Exchange Rule 2614(e) above, . . .". The Exchange proposes to replace the phrase "cancelled or replaced" in Exchange Rule 2616(a)(5) with "modified via a Cancel/Replace message." Doing so would clarify within Exchange Rule 2616(a)(5) that the order is being modified, rather than cancelled and replaced with a new order.

Neither of the above changes amend the meaning or operation of either rule. They are simply intended to clarify each rule and to ensure the use of consistent terminology across the Exchange's rulebook.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,¹² in general, and furthers the objectives of Section 6(b)(5),¹³ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The proposed rule change promotes just and equitable principles of trade because it is similar to other cases today where an order may lose priority when a modification is made via a Cancel/Replace message. For example, increasing the size of an order 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.¹⁴ The System also re-evaluates the order for execution when an Equity Member¹⁵ increases the size of an order via a Cancel/Replace message. The same is true for a position change made pursuant to Exchange Rule 2614(e) during a Short Sale Period. For example, should an order's position be changed from long to short during a Short Sale Period, that order would become subject to the price

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ See Exchange Rule 2616(a)(5).

¹⁵ The term "Equity Member" is a Member authorized by the Exchange to transact business on MIAX Pearl Equities. See Exchange Rule 1901.

restrictions of Regulation SHO¹⁶ and the System would evaluate whether the order may be executed or re-priced pursuant to the Exchange's Short Sale Price Sliding Process.¹⁷ Under the proposed rule change, this evaluation would result in the order receiving a new timestamp and loss in priority, even when that order is not re-priced. While the price of the order may not change, the position change during a Short Sale Period impacts whether the order is subject to the price restrictions of Regulation SHO and may or may not become eligible for execution. Therefore, like size change via a Cancel/Replace message may change the execution status of the order, the Exchange believes treating a position change made via a Cancel/Replace message in the same manner and updating the order's timestamp is reasonable and consistent with the Act because it also reflects a change in the execution status of the order.

Further, as stated above, Exchange Rule 2614(e)(3) provides that only the price, sell long, sell short, or short exempt indicator, Max Floor of an order with a Reserve Quantity, and size terms of the order may be changed by a Cancel/Replace Message. If a User desires to change any other terms of an existing order the existing order must be cancelled and a new order must be entered. This includes, for example, changes to the minimum quantity condition of an order with a Minimum Execution Quantity instruction.¹⁸ In such case, the existing order must be cancelled and new order entered with the revised minimum execution quantity. Like a position change during a Short Sale Period, the new order would be provided a new timestamp and re-evaluated for execution based on the revised minimum execution quantity. Therefore, the proposed rule change promotes just and equitable principles of trade because it is similar to existing exchange functionality.

¹⁶ 17 CFR 242.201(1)(i).

¹⁷ Exchange Rule 2614(g)(3).

¹⁸ See Exchange Rule 2614(c)(7).

The proposed rule change promotes just and equitable principles of trade because it is consistent with the other exchanges' treatment of position changes and their impact on the order's priority. For example, Investors Exchange LLC ("IEX") Rule 11.190(d)(4) does not allow for a position change via a Cancel/Replace message and requires that if a "[u]ser desires to modify an invalid field on an order, the existing order must be canceled and a new order must be entered."¹⁹ Therefore, on IEX, a market participant must enter a new order where it seeks to change that order's position at all times, not just during a Short Sale Period. This is broader than the Exchange's proposal which is limited to position changes during a Short Sale Period. On IEX, the new order would receive a new timestamp, resulting in a priority loss. In addition, The Nasdaq Stock Market, LLC ("Nasdaq") Rule 4756(a)(3) provides that an order will be cancelled if the order's position is "redesignated as short during a Short Sale Period and the order is not priced at a Permitted Price or higher under Nasdaq Rule 4763(e)." This would require the replacement of the original order with a new order and a new timestamp, resulting in a priority loss.²⁰ Therefore, the Exchange's proposal is not novel and is similar to functionality provided for on other exchanges.

Unlike where an order retains its timestamp when a modification involves a decrease in the size of the order or a change to the Max Floor of an order with a Reserve Quantity, a change in the order's position during a Short Sale Period triggers compliance with additional regulatory requirements. In such case, the Exchange must assess whether the order is priced or may be executed in accordance with Regulation SHO. For example, an order whose position is changed

¹⁹ See IEX Rule 11.190(d)(4) (stating that "Symbol, side, execution instruction, order type, and TIF are considered invalid fields. If a User attempts modify an invalid field by submitting a Replace Message, the order amendment will be rejected by the Exchange. If a User desires to modify an invalid field on an order, the existing order must be canceled and a new order must be entered").

²⁰ See Nasdaq Rule 4756(a)(3).

from long to short during a Short Sale Period may not be priced at or above the national best bid and may either need to be repriced pursuant to the Exchange's Short Sale Price Sliding Process or cancelled based on the Equity Member's instructions. Conversely, an order whose position is changed from short to long during a Short Sale Period would no longer be subject to the price restrictions of Regulation SHO and may now be eligible for execution or routing to an away market. An order marked short is not subject to the price restrictions of Regulation SHO when a Short Sale Period is not in effect. Therefore, allowing the order to retain its timestamp when a Short Sale Period is not in effect continues to promote just and equitable principles of trade because the execution status of the order remains unchanged.²¹

Notwithstanding the above, the proposed rule change also protects investors and the public interest because it does not change anything with regard to compliance with Regulation SHO, including Regulation SHO's order marking requirements and Equity Member's compliance with its applicable exceptions. Today, an Equity Member has the ability to modify their order's position via a Cancel/Replace message. The proposal does not change that. Today, Equity Members are required to mark their orders properly both upon entry and when modifying that order's position later via a Cancel/Replace message. This proposed rule change does not alter Equity Members obligations to continue to ensure that their orders are marked in accordance with the requirements of Regulation SHO and Exchange Rule 2623²² at all times,

²¹ This is also consistent with other exchanges' rules. See, e.g., Members Exchange, Inc. Rule 11.9(a)(4) and Cboe EDGX Exchange, Inc. Rule 11.9(a)(4).

²² Exchange Rule 26123 provides that "[a]ll short sale orders shall be identified as "short" or "short exempt" when entered into the System. If marked "short exempt," the Exchange shall execute, display and/or route a short sale order marked "short exempt" without regard to any short sale price test restriction in effect during a Short Sale Period, as defined in Exchange Rule 2614(g)(3)(A). The Exchange relies on the marking of an order as "short exempt" when handling such order, and thus, it is the entering Member's responsibility, not the Exchange's responsibility, to comply with the requirements of

including when changing the order's position via a Cancel/Replace message when a Short Sale Period is or is not in effect. As they are required to do today, Equity Members must also continue to ensure that their order complies with any applicable exemption from Regulation SHO that they seek to avail themselves of, not only at the time of entry, but also at the time they change the order's position via a Cancel/Replace message.²³ Again, nothing in this proposal alters a Member's obligations under Regulation SHO. The Exchange notes that the proposed rule change removes impediments to and perfects the mechanism of a free and open market and a national market system because it is designed to address a discrete and potentially limited scenario of a Short Sale Period being in effect when the a position change is made via a Cancel/Replace message. If a Short Sale Period is not in effect, an order would retain its timestamp when its position is changed via a Cancel/Replace message. This proposed rule change is narrowly focused to address only where an order would lose priority where its position is changed via a Cancel/Replace message during a Short Sale Period.

The proposed rule change would also remove impediments to and promote just and equitable principles of trade because it reflects a necessary technology change that would ensure continued System resiliency and stability. As a national securities exchange, the Exchange is subject to Regulation Systems Compliance and Integrity ("Reg. SCI").²⁴ Reg. SCI Rule 1001(a) requires that the Exchange establish, maintain, and enforce written policies and procedures reasonably designed to ensure (among other things) that its Reg. SCI systems have levels of capacity adequate to maintain the Exchange's operational capability and promote the

Regulation SHO relating to marking of orders as "short exempt." Exchange Rule 2603 also requires that Equity Members input accurate information into the System.

²³ The Exchange will continue to surveil for compliance with Exchange Rules 2623 and 2603 as well as Regulation SHO.

²⁴ 17 CFR 242.1000-1007.

maintenance of fair and orderly markets.²⁵ The proposed rule change is necessary to ensure the ongoing resiliency of the Exchange's infrastructure and underlying technology to ensure the Exchange continues to satisfy its requirements under Reg. SCI. The Exchange takes pride in the reliability and availability of its System. The proposed rule change is necessary due to technological complexity and to continue to ensure the System operates consistent with the Exchange's rules and in accordance with the Exchange's obligations under Reg. SCI.

Lastly, the proposed clarifying changes to Exchange Rules 2614(e)(3) and 2616(a)(5) removes impediments to and perfect a free and open market system because they simply clarify each rule and ensure the use of consistent terminology across the Exchange's rulebook. Neither of these changes amend the meaning or operation of either rule.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not being proposed for competitive reasons. As discussed above, the need for the proposed rule change became apparent when making technology changes related to the Exchange's upcoming implementation of the Reserve Quantity and Minimum Execution Quantity order instructions.²⁶ Further, this proposed rule change to cause an order to lose priority when the order's position is changed during a Short Sale Period via a Cancel/Replace message is no different than where an Equity Member seek to change the position of their order by cancelling that order and re-submitting a new order. In each case, the order will receive a new timestamp at the time the position was changed via a cancel or replace message.

Adjusting the order's timestamp due to a position change via a Cancel/Replace message

²⁵ 17 CFR 242.1001(a).

²⁶ See supra note 9.

during a Short Sale Period does not impose any burden on inter-market competition that is not necessary or appropriate in furtherance of the Act. Equity Members may take into consideration that their order may experience a loss in priority when they change their order's position during a Short Sale Period when determining where to send their order for execution. Equity Members are free to consider this change as part of their overall experience on the Exchange, including the quality of executions and other functionality offerings, which are part of their order routing decisions.

Lastly, adjusting the order's timestamp due to a position change via a Cancel/Replace message during a Short Sale Period does not also impose any burden on intra-market competition that is not necessary or appropriate in furtherance of the Act because it is similar to functionality on other exchanges.²⁷ Also, like above for intra-market competition, Equity Members may take into consideration that their order may experience a loss in priority when they change their order's position during a Short Sale Period when determining where to send their order for execution. Equity Members who make position changes during a Short Sale Period may consider the potential that their order may lose priority and may choose to price their orders more aggressively.

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

²⁷ See supra notes 19 and 20.

Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act²⁸ and Rule 19b-4(f)(6)²⁹ 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 e-mail [to rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-PEARL-2021-35 on the subject line.

Paper comments:

²⁸ 15 U.S.C. 78s(b)(3)(A).

²⁹ 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.

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

All submissions should refer to File Number SR-PEARL-2021-35. 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 Web site (<http://www.sec.gov/rules/sro.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-PEARL-2021-35 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

Vanessa Countryman
Secretary

³⁰ 17 CFR 200.30-3(a)(12).

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

MIAX PEARL, LLC Rules

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Rule 2614. Orders and Order Instructions

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(e) **Cancel/Replace Messages.** A User may, by appropriate entry in the System, cancel or replace an existing order entered by the User, subject to the following limitations.

(1) – (2) (No change).

(3) 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. If a User desires to change any other terms of an existing order the existing order must be cancelled and a new order must be entered.

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Rule 2616. Priority of Orders

(a) (No change).

(1) – (5) (No change).

(5) **Cancel/Replace Messages.** In the event an order has been modified via a Cancel/Replace message[cancelled or replaced] 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. 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.

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