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May 5, 2017

Via Electronic Mail (rule-coments@sec.gov)

Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Re: MIAX PEARL LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the MIAX Pearl Fee Schedule to Establish an Options Regulatory Fee (File No. SR-PEARL-2017-15)

Dear Mr. Fields:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ appreciates the opportunity to comment on the above-referenced filing (the “Filing” or the “PEARL Filing”) made by MIAX PEARL, Inc. (“PEARL”) with the Securities and Exchange Commission (“Commission”). In the Filing, PEARL applies to amend its fee schedule by establishing an Options Regulatory Fee (“ORF”) of \$0.0010 per contract, and PEARL states that the ORF would be assessed “for all options transactions executed, cleared, or ultimately cleared by the Member which are cleared by OCC in the ‘customer’ range, regardless of the exchange on which the transaction occurs.” The ORF would be collected either directly from Members or indirectly from non-Members that ultimately clear the transaction that is subject to the ORF through their clearing firms by OCC on behalf of MIAX PEARL.”² For the reasons outlined below, SIFMA recommends that the Commission suspend the PEARL Filing under the applicable provisions of the Securities Exchange Act of 1934 (“Exchange Act”).

The above-referenced filing was submitted by PEARL after it withdrew File. No. SR-PEARL-2017-09. The views expressed in SIFMA’s comment letter³ on the withdrawn filing remain relevant and we respectfully refer to the Commission to the SIFMA letter.

Currently, all listed options exchanges that assess an ORF⁴, including PEARL’s affiliate exchange, MIAX, specify in their rules that ORF is assessed on all options transactions that are

¹ SIFMA is the voice of the U.S. securities industry. We represent the broker-dealers, banks and asset managers whose nearly 1 million employees provide access to the capital markets, raising over \$2.5 trillion for businesses and municipalities in the U.S., serving clients with over \$20 trillion in assets and managing more than \$67 trillion in assets for individual and institutional clients including mutual funds and retirement plans. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>.

² See Securities Exchange Act Release No. 34-80423 (April 10, 2017), 82 FR 18045 (April 14, 2017).

³ See [SIFMA Comment Letter on Release No. 34-80035; File No. SR-PEARL-2017-09](#).

⁴ Bats BZX Exchange, Bats EDGX Exchange, BOX Options Exchange LLC, C2 Options Exchange, Chicago Board Options Exchange, International Securities Exchange, ISE Gemini, Miami International
New York | Washington

executed or cleared by the Exchange Member in the Customer Range. However, PEARL states in the Filing that, “under certain circumstances a transaction that is subject to the ORF can result in the ORF being collected from a non-Member of the Exchange.”⁵ This statement takes PEARL’s policy outside of the scope of language of approved rules governing ORF on those options exchanges that assess it. Additionally, PEARL asserts in the filing that “This assessment practice is identical to the assessment practice currently utilized by the Exchange’s affiliate, Miami International Securities Exchange, LLC (“MIAX Options”).⁶” SIFMA questions the validity of this practice on MIAX since it is not codified in their its rule set.⁷

SIFMA is committed to sound market regulation and understands that PEARL has certain statutory obligations to regulate its members. In this regard, SIFMA concedes that the self-regulatory model in the securities markets is premised on being supported by broker-dealer funding. Going further, SIFMA agrees that it is appropriate for PEARL to codify the collection of ORF for those trades that take place on the exchange. However, SIFMA questions PEARL’s jurisdiction over any non-Member to enforce its rules, including the assessment of fees. If exchanges are indeed permitted to enforce their rules on non-Members, one must question where the line would be drawn. Further, the Commission should specifically determine whether it is consistent with the Exchange Act for an exchange to assess fees to non-Members.

In its filing, PEARL asserts that “The Exchange believes that charging the ORF across markets will avoid having Members direct their trades to other markets in order to avoid the fee and to thereby avoid paying for their fair share of regulation. If the ORF did not apply to activity across markets then a Member would send their orders to the least cost, regulated exchange.”⁸ SIFMA disagrees with this assertion, and notes that several exchanges, including Nasdaq’s PHLX and NOM venues, and NYSE’s ARCA and AMEX platforms, do not assess ORF across markets. Rather, these exchanges assess ORF on executions (that clear in the customer range at OCC) that occurred on the respective exchange. While nuances exist between the models, SIFMA reiterates our support for Nasdaq’s PHLX and NOM collection approach which assesses ORF only on transactions that occur on the respective Exchange. It is not the role of PEARL, or of any other exchange, to charge regulatory fees to non-members based on the unsubstantiated view that other exchanges are insufficiently regulated. Not to mention that broker-dealers representing customer orders are subject to best execution obligations and must route orders based on those principles.

SIFMA urges the Commission to review the relevant rules and operational processes that are currently in place at the options exchanges that impose an ORF to ensure that they are both supported by relevant exchange rules and the Exchange Act itself. The Commission should review these practices both in terms of charging the ORF to non-members and to charging the ORF to members for their transactions on other exchanges. Section 6(b)(4) of the Exchange Act expressly states that an exchange’s rules must provide for the “equitable allocation of

Securities Exchange, NASDAQ BX, NASDAQ PHLX, Nasdaq Stock Market, NYSE MKT and NYSE Arca.

⁵ See 82 FR at 18046.

⁶ Id.

⁷ See Release No. 34-71762; File No. SR-MIAX-2014-10.

⁸ Id.

reasonable...fees, and other charges among its members...and other persons using its facilities.”⁹

SIFMA recommends that, in addition to reviewing current practices, the Commission should require the options exchanges to maintain standardized files that would enhance transparency and ensure the ORF is charged uniformly. Each exchange should disclose fully and publicly how ORF revenue is allocated and to detail the percentage of regulatory costs covered by the ORF. Each exchange should provide a breakdown of the types of costs associated with its regulation and supervision of members’ customer options business. SIFMA remains concerned that exchanges could use ORF revenue to offset costs that go beyond appropriate regulatory expenses, and could in fact, be used to subsidize startup costs for a new options exchange.

For the reasons set forth above, SIFMA recommends that the Commission suspend the PEARL Filing. While SIFMA agrees with the intent of the Filing to codify the practice of the collection of ORF from non-members for executions on PEARL and away exchanges, the Filing does not support the practice of collecting ORF from those firms who are not members of PEARL. SIFMA re-affirms our view that this is an overly broad application of the ORF, and we urge the Commission to reconsider the ability of any options exchange to charge an ORF on transactions executed on other exchanges.

* * *

SIFMA greatly appreciates the Commission’s consideration of our comments on File No. SR-PEARL-2017-15. We would be pleased to discuss these comments in greater detail with the staff of the Commission. If you have any questions, please contact Ellen Greene at (212) 313-1287 or egreene@sifma.org.

Sincerely,



Ellen Greene
Managing Director

cc: The Honorable Jay Clayton, Chairman, SEC
The Honorable Michael S. Piwowar, Commissioner, SEC
The Honorable Kara M. Stein, Commissioner, SEC

Heather Seidel, Acting Director, Division of Trading and Markets, SEC
Gary Goldsholle, Deputy Director, Division of Trading and Markets, SEC
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Richard Holley III, Associate Director, Division of Trading and Markets, SEC

Thomas Gallagher, Chief Executive Officer, MIAX PEARL

⁹ 15 U.S.C.A. § 78f(b)(4) (2016) (emphasis added).