

example, the Commission notes that any discounted issuance of stock to a company's employees, directors, or other service providers would require shareholder approval under the Exchange's equity compensation rules.³² In addition, shareholder approval would continue to be required if the issuance resulted in a change of control,³³ as well as for certain issuances to Related Parties, such as officers, directors and their affiliates, among others.³⁴ Finally, as discussed above, Sections 312.03(b) and (c) set forth circumstances under which shareholder approval would be required, and such approval would continue to be required under the proposal to the extent that an issuance would not qualify for the exceptions enumerated in those rules.³⁵

The Commission further notes, in approving the changes to measure market value as the lower of the closing price and five-day average closing price and eliminate the book value requirement, that the proposed amendments are similar to the rules of another national securities exchange that the Commission found consistent with the Act.³⁶

The Commission believes that the additional proposed amendments and clarifications to the rule, including to the definition of official closing price, will add transparency to the Exchange's rules and are therefore consistent with the Act.³⁷

under one or more of the other subparagraphs." The Commission notes that the independent application of these provisions includes the provisions on shareholder approval for equity compensation plans as set forth in Section 303A.08, as referenced in Section 312.03(a) of the Manual.

³² See Sections 312.03(a) and 303A.08 of the Manual. The Commission notes that Section 303A.08 uses the term "fair market value" for purposes of determining whether an issuance of stock would qualify for an exception from the shareholder approval requirement in Section 303A.08. The Exchange has represented that for purposes of qualifying for that exception, the Exchange has always interpreted fair market value as identical to the Official Closing Price definition proposed to be adopted in Section 312.04, and, to avoid any potential confusion, the Exchange will submit a proposed rule filing to amend Section 303A.08 to codify this interpretation. See Notice, *supra* note 3, at 65379–80. For any avoidance of doubt, the Commission notes that the term Minimum Price, as defined above by the Exchange in its current proposal, is not applicable to the equity compensation provisions in Section 303A.08 or Section 312.03(a).

³³ See Section 312.03(d) of the Manual.

³⁴ See Section 312.03(b) of the Manual.

³⁵ See *supra* notes 6–9 and accompanying text.

³⁶ See Securities Exchange Act Release No. 84287 (Sept. 26, 2018), 83 FR 49599 (Oct. 2, 2018) (SR–NASDAQ–2018–008). See also NASDAQ Rule 5635(d).

³⁷ The Commission notes that the Exchange has indicated that the changes to the definition of Official Closing Price were made to conform the

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,³⁸ that the proposed rule change (SR–NYSE–2018–54), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁹

Eduardo A. Aleman,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85372; File No. SR–NASDAQ–2019–013]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a New SCAR Routing Option

March 20, 2019.

Pursuant to 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 March 6, 2019, The Nasdaq Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("Commission") 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 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 adopt a new SCAR routing option under Rule 4758.

The text of the proposed rule change is available on the Exchange's website at <http://nasdaq.cchwallstreet.com>, at the principal office of the Exchange, 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

definition to the language used throughout the rule and does not have any substantive effect. See *supra* note 16.

³⁸ 15 U.S.C. 78s(b)(2).

³⁹ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

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 is proposing to adopt SCAR, a new order routing³ option under Rule 4758(a)(1)(A). The Exchange currently provides a variety of routing options under Rule 4758(a)(1)(A). Routing options may be combined with all available Order Types and Times-in-Force, with the exception of Order Types and Times-in-Force whose terms are inconsistent with the terms of a particular routing option. The SCAR routing option would allow members to seek liquidity on the Exchange and the other equity markets operated by Nasdaq, Inc., the Nasdaq BX Equities Market ("BX") and Nasdaq PSX ("PSX") and together with BX and the Exchange, the "Nasdaq Affiliated Exchanges"). SCAR will operate in the same manner as the current CART strategy, but will differ in the initial order routing to the Nasdaq Affiliated Exchanges. Whereas CART orders route sequentially to BX, PSX and then check the System,⁴ SCAR orders will route simultaneously to all three Nasdaq Affiliated Exchanges in accordance with the System routing table.⁵

³ Routing is an Order Attribute that allows a Participant to designate an Order to employ one of several Routing Strategies offered by Nasdaq, as described in Rule 4758; such an Order may be referred to as a "Routeable Order." Upon receipt of an Order with the Routing Order Attribute, the System will process the Order in accordance with the applicable Routing Strategy. In the case of a limited number of Routing Strategies, the Order will be sent directly to other market centers for potential execution. For most other Routing Strategies, the Order will attempt to access liquidity available on Nasdaq in the manner specified for the underlying Order Type and will then be routed in accordance with the applicable Routing Strategy. Shares of the Order that cannot be executed are then returned to Nasdaq, where they will (i) again attempt to access liquidity available on Nasdaq and (ii) post to the Nasdaq Book or be cancelled, depending on the Time-in-Force of the Order. See Rule 4703(f).

⁴ See Rule 4758(a)(1)(A)(xi).

⁵ The term "System routing table" refers to the proprietary process for determining the specific trading venues to which the System routes orders and the order in which it routes them. Nasdaq reserves the right to maintain a different System routing table for different routing options and to modify the System routing table at any time without notice. See Rule 4758(a)(1)(A).

Specifically as proposed, SCAR would be a routing option under which orders check the System⁶ for available shares and simultaneously route⁷ to BX and PSX in accordance with the System routing table.⁸ Similar to CART, if shares remain unexecuted after routing, they are posted on the Exchange's book or cancelled, depending on the Time-in-Force of the order.⁹ Once on the book, should the order subsequently be locked or crossed by another market center, the System will not route the order to the locking or crossing market center. This is also similar to how CART treats shares that remain unexecuted after completing the initial order route and posting to the Exchange book. Like all of the Exchange's routing strategies, SCAR is designed to comply with Rule 611 and the other provisions of Regulation NMS.¹⁰

The Exchange will implement the proposal in the second quarter of 2019, subject to approval by the Commission. The Exchange will provide prior notice of the implementation date in an Equity Trader Alert.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹² in particular, in that it is designed to promote just and equitable principles of trade, 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

Exchange believes that the proposed rule change will accomplish those ends by providing market participants with an additional voluntary routing option that will allow them to easily access liquidity available on all Nasdaq Affiliated Exchanges. The Exchange expects the proposed routing strategy will benefit firms that do not employ routing or trading strategies under which the firm itself would rapidly access liquidity provided on the multiple venues. SCAR would not provide any advantage, including latency and priority, to members when routing to the Nasdaq Affiliated Exchanges as compared to other methods of routing or connectivity available to members by the Exchange.

Lastly, the Exchange notes that routing options enabling the routing of orders between affiliated exchanges is not unique, and that the proposed SCAR routing option is similar to those already offered by the Exchange (*i.e.*, CART) and by other exchange groups. Specifically, Cboe BZX Exchange ("BZX"), Cboe BYX Exchange ("BYX"), Cboe EDGA Exchange ("EDGA"), and Cboe EDGX Exchange ("EDGX") offer a routing option called ALLB that enables an order, whether sent to BZX, BYX, EDGA, or EDGX, to check the BZX, BYX, EDGA, and EDGX books for liquidity before optionally posting on the BZX, BYX, EDGA, or EDGX book.¹³ For the foregoing reasons, the Exchange believes that the proposed rule change is consistent with the Act.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. As discussed above, the proposed functionality is partly based on existing functionality available on competitor exchanges.¹⁴ Furthermore, the Exchange provides routing services in a highly competitive market in which participants may avail themselves of a wide variety of routing options offered by other exchanges, alternative trading systems, other broker-dealers, market participants' own proprietary routing systems, and service bureaus. In such an environment, system enhancements such as the changes proposed in this rule filing do not burden competition, because they can succeed in attracting order flow to

the Exchange only if they offer investors higher quality and better value than services offered by others. Encouraging competitors to provide higher quality and better value is the essence of a well-functioning competitive marketplace. Lastly, SCAR would not provide any advantage to members when routing to the Nasdaq Affiliated Exchanges as compared to other methods of routing or connectivity available to members by the Exchange. For the foregoing reasons, the Exchange does not believe 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.

C. 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.

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 from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁵ and Rule 19b-4(f)(6) thereunder.¹⁶

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.

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of 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.

⁶ The term "System" shall mean the automated system for order execution and trade reporting owned and operated by The Nasdaq Stock Market LLC. See Rule 4701(a).

⁷ As with all routing strategies that provide for simultaneous routing, the incoming SCAR order would be broken up into child orders. For SCAR routing, the orders would be sent to the Exchange, BX, and PSX at the same time based on the available displayed interest on these exchanges. In particular, the Exchange would allocate the number of shares from the parent order based on the System routing table for SCAR, and route the allocated shares (*i.e.*, the child orders) to the executing venues simultaneously.

⁸ As is the case today for all market destinations on the System routing table, the placement of the Exchange, BX and PSX on the applicable System routing table for SCAR will depend on the Exchange's ongoing assessments of factors such as latency, fill rates, reliability, and cost.

⁹ Unexecuted shares of a SCAR order will return to the Exchange after routing and check the System for available shares before cancelling if the order has a Time-in-Force of IOC. Otherwise, shares that remain unexecuted after routing will return to the Exchange and check the System for available shares before posting on the Exchange's book (*e.g.*, the SCAR order has a Time-in-Force of DAY).

¹⁰ 17 CFR 242.611.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

¹³ See BZX Rule 11.13(b)(3)(O), BYX Rule 11.13(b)(3)(M), EDGA Rule 11.11(g)(7), and EDGX Rule 11.11(g)(7). ALLB is also substantially similar to the Exchange's CART strategy, as described above.

¹⁴ *Id.*

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2019-013 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-NASDAQ-2019-013. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of 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-NASDAQ-2019-013 and should be submitted on or before April 16, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Eduardo A. Aleman,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85376; File No. SR-PEARL-2019-09]

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

March 20, 2019.

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 March 8, 2019, MIAX PEARL, LLC ("MIAX PEARL" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange is filing a proposal to amend the MIAX PEARL Fee Schedule (the "Fee Schedule").

The text of the proposed rule change is available on the Exchange's website at <http://www.miaxoptions.com/rule-filings/pearl>, at MIAX PEARL's principal office, and at the Commission's Public Reference Room.

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

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

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

1. Purpose

The Exchange proposes to (i) make a number of non-substantive, technical corrections to its routing fee table set

forth in Section 1(b) of the Fee Schedule to reflect the recent addition of a new national securities exchange, MIAX Emerald, LLC ("MIAX Emerald"),³ to be listed in the routing fee table; (ii) change the exchange groupings of options exchanges within the routing fee table and to adjust the fee for certain groupings, to reflect the associated fee for customer orders that are routed to those options exchanges for execution; and (iii) make a non-substantive, technical formatting correction.

Addition of MIAX Emerald

MIAX Emerald commenced operations as a national securities exchange registered under Section 6 of the Act⁴ on March 1, 2019. The names of all options exchanges are set forth in the Exchange's routing fee table set forth in Section 1(b) of the Fee Schedule, which sets forth the fees for customer orders that are routed to those options exchanges for execution. Accordingly, the Exchange proposes to update its routing fee table set forth in Section 1(b) of the Fee Schedule to reflect the addition of MIAX Emerald as a national securities exchange. The amount of the applicable fee is determined based upon (i) the origin type of the order, (ii) whether or not it is an order for an option in a Penny or Non-Penny class (or other explicitly identified classes) and (iii) to which away market it is being routed.⁵ The Exchange proposes to add MIAX Emerald to the second "Routed, Priority Customer,"⁶ Penny Pilot" exchange grouping, the second "Routed, Priority Customer, Non-Penny Pilot" exchange grouping, the "Routed, Public Customer that is not a Priority Customer, Penny Pilot" exchange grouping, and the second "Routed, Public Customer that is not a Priority Customer, Non-Penny Pilot" exchange grouping. In determining its Routing Fees, the Exchange takes into account transaction fees and rebates assessed by the away markets to which the Exchange routes orders, as well as the

³ See Securities Exchange Act Release No. 84891 (December 20, 2018), 83 FR 67421 (December 28, 2018) (File No. 10-233) (order approving application of MIAX Emerald, LLC for registration as a national securities exchange).

⁴ 15 U.S.C. 78f.

⁵ This is similar to the methodologies utilized by BATS in assessing Routing Fees. See Cboe BZX Options Fee Schedule under "Fee Codes and Associated Fees."

⁶ "Priority Customer" means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). See Exchange Rule 100, including Interpretations and Policies .01.

¹⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.