

evaluates (and documents the basis of that evaluation) the Regulated Fund's compliance with the terms and conditions of the application and the procedures established to achieve such compliance.

For the Commission, by the Division of Investment Management, under delegated authority.

**Eduardo A. Aleman,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85164; File No. SR-EMERALD-2019-03]

### Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 519, MIAX Emerald Order Monitor

February 19, 2019.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 11, 2019, MIAX Emerald, LLC ("MIAX Emerald" or "Exchange"), filed with the Securities and Exchange Commission ("Commission") a 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 is filing a proposal to amend Exchange Rule 519, MIAX Emerald Order Monitor, in order to harmonize its rule to the rules of the Exchange's affiliate, MIAX PEARL, LLC ("MIAX PEARL").

The text of the proposed rule change is available on the Exchange's website at <http://www.miaxoptions.com/rule-filings/emerald>, at MIAX Emerald'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 amend Exchange Rule 519, MIAX Emerald Order Monitor, to align its behavior pertaining to the handling of limit orders to buy and limit orders to sell to that of MIAX PEARL.

##### Current Functionality

In order to avoid the occurrence of potential obvious or catastrophic errors on the Exchange the MIAX Emerald Order Monitor will prevent certain orders from executing or being placed on the Book at prices outside pre-set standard limits. Beginning after the Opening Process is complete, the MIAX Emerald Order Monitor will be operational each trading day until the close of trading.

Paragraph (3), Limit Orders to Buy or Sell, of the Rule, states that the System will reject an incoming limit order that crosses the contra-side NBBO by at least 50% or \$2.50, whichever is less. The following examples illustrate those situations where lower priced limit orders are rejected because they cross the NBBO by at least 50%: (A) If the NBBO on the offer side is \$4.00, an order to buy options for \$6.00 or more will be rejected; and (B) if the NBBO on the bid side is \$4.00, an order to sell options for \$2.00 or less will be rejected. Additionally, the following are examples of those situations where higher priced limit orders are rejected because they cross the NBBO by \$2.50 or more: (A) If the NBBO on the offer side is \$12.00, an order to buy options for \$14.50 or more will be rejected; and (B) if the NBBO on the bid side is \$12.00, an order to sell options for \$9.50 or less will be rejected. Notwithstanding the foregoing, with respect to limit orders to sell, the MIAX Emerald Order Monitor will not be activated when the NBBO on the bid side is equal to or less than \$0.25. Thus, the System will accept all limit orders to sell regardless of price during this time.

##### Proposal

MIAX Emerald plans to commence operations as a national securities

exchange registered under Section 6 of the Act<sup>3</sup> on March 1, 2019. As described more fully in MIAX Emerald's Form 1 application,<sup>4</sup> the Exchange is an affiliate of Miami International Securities Exchange, LLC ("MIAX Options") and MIAX PEARL, LLC ("MIAX PEARL"). MIAX Emerald Rules, in their current form, were filed as Exhibit B to its Form 1 on August 16, 2018, and at that time MIAX Emerald Rule 519 was substantially similar to MIAX PEARL Rule 519. In the time between when the Exchange filed its Form 1 and the time the Exchange received its approval order, MIAX PEARL made changes to its Rule 519.<sup>5</sup> In order to ensure consistent operation of both MIAX Emerald and MIAX PEARL through having consistent rules, the Exchange now proposes to amend the MIAX Emerald Rule as described below.

The Exchange proposes to amend current subsection (3) to create a separate subsection for limit orders to buy (proposed subsection (3)), and for limit orders to sell (proposed subsection (4)). The Exchange proposes to introduce a new threshold for limit orders to buy which will provide that for options with a National Best Offer ("NBO") less than or equal to \$0.50 the System<sup>6</sup> will reject an incoming limit order that has a limit price that is equal to or greater than the NBO Price by \$0.25. The Exchange believes that creating separate subsections dedicated to limit orders to buy and limit orders to sell will add clarity and additional detail to the Exchange's rule. Additionally, the Exchange proposes to provide new examples demonstrating the operation of the MIAX Emerald Order Monitor functionality for both limit orders to buy and limit orders to sell.

Proposed subsection (3), Limit Orders to Buy, will provide that for options with a National Best Offer ("NBO") greater than \$0.50 the System will reject an incoming limit order that has a limit price equal to or greater than the NBO by the lesser of (i) \$2.50, or (ii) 50% of the NBO price. The proposed rule will also provide that for options with an NBO less than or equal to \$0.50 the System will reject an incoming limit

<sup>3</sup> 15 U.S.C. 78f.

<sup>4</sup> 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.)

<sup>5</sup> See Securities Exchange Act Release No. 84887 (December 20, 2018), 83 FR 67452 (December 28, 2018) (SR-PEARL-2018-25).

<sup>6</sup> The term "System" means the automated trading system used by the Exchange for the trading of securities. See Exchange Rule 100.

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

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

order that has a limit price that is equal to or greater than the NBO price by \$0.25.

The proposed examples provide that (A) if the NBO is \$12.00 an incoming limit order to buy options for \$14.50 or more will be rejected; and (B) if the NBO is \$0.10 an incoming limit order to buy options for \$0.15 will not be rejected; whereas if the NBO is \$0.10 an incoming limit order to buy options for \$0.35 will be rejected as the limit price of the order is \$0.25 greater than the NBO. Proposed example A provides an example of an order being rejected when the order's limit price (\$14.50) is greater than the NBO (\$12.00) by the lesser of \$2.50 or 50% of the NBO price (\$6.00). Proposed example B demonstrates how the protection works when the NBO of the option is \$0.50 or less. If the NBO is \$0.10 an incoming limit order to buy options for \$0.15 will not be rejected as the order's limit price is not \$0.25 greater (\$0.35) than the NBO price.

Proposed subsection (4) Limit Orders to Sell, will provide that for options with a National Best Bid ("NBB") equal to or greater than \$0.25 the System will reject an incoming limit order that has a limit price equal to or less than the NBB by the lesser of (i) \$2.50, or (ii) 50% of the NBB price.

Additionally, the proposed rule will include examples to demonstrate the operation of the rule in different circumstances. The proposed examples provide that (A) if the NBB is \$12.00 an incoming limit order to sell options for \$9.50 or less will be rejected; and (B) if the NBB is \$0.30 an incoming limit order to sell options for \$0.15 will be rejected; whereas if the NBB is \$0.30 an incoming limit order to sell options for \$0.20 will not be rejected as the limit price of the order is not less than 50% of the NBB price. Proposed example A provides an example of an order being rejected when the order's limit price (\$9.50) is less than the NBB (\$12.00) by the lesser of \$2.50 or 50% of the NBB price (\$6.00). Proposed example B demonstrates how the protection works when the NBB of the option is greater than \$0.25.

The Exchange believes its proposed changes provide additional detail and clarity to the Exchange's rules concerning order protections for incoming limit orders to buy and incoming limit orders to sell.

## 2. Statutory Basis

MIAX Emerald believes that its proposed rule change is consistent with Section 6(b) of the Act<sup>7</sup> in general, and furthers the objectives of Section 6(b)(5)

of the Act<sup>8</sup> in particular, in that 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 mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes its proposal promotes just and equitable principles of trade, removes impediments to and perfects the mechanisms of a free and open market and a national market system, and in general, protects investors and the public interest by establishing thresholds for the handling of incoming limit orders to buy and sell, and by providing examples describing the System's behavior in various circumstances. Currently the Exchange's rule discusses the operation of the MIAX Emerald Order Monitor on incoming limit orders to buy or incoming limit orders to sell in a single paragraph.<sup>9</sup> The Exchange believes providing separate paragraphs in the rule specifically discussing the MIAX Emerald Order Monitor process for incoming limit orders to buy (proposed paragraph (a)(3)) and for incoming limit orders to sell (proposed paragraph (a)(4)), promotes the protection of investors and the public interest by providing additional detail and clarity in the rule. It is in the best interest of investors and the public for rules to be accurate and precise to avoid the potential for confusion. Further, the Exchange believes that providing a clear line of delineation for the treatment of limit orders to buy when the NBO is less than or equal to \$0.50, and for limit orders to sell when the National Best Bid ("NBB") is less than \$0.25 benefits investors and the public by establishing clear and unambiguous thresholds regarding the acceptance or rejection of orders.

The Exchange believes that the proposed changes to its rulebook add additional detail and provide further clarification to Members,<sup>10</sup> investors, and the public, regarding the Exchange's order monitoring functionality. The Exchange believes it is in the interest of investors and the public to accurately

describe the behavior of the Exchange's System in its rules as this information may be used by investors to make decisions concerning the submission of their orders. Transparency and clarity are consistent with the Act because it removes impediments to and helps perfect the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest by accurately describing the behavior of the Exchange's System.

The Exchange believes that the proposed changes promote just and equitable principles of trade and removes impediments to and perfects the mechanism of a free and open market and a national market system and, in general, protects investors and the public interest by providing additional detail and clarity in the Exchange's rules. Further, the Exchange's proposal provides transparency and clarity in the rules and is consistent with the Act because it removes impediments to and helps perfect the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest by accurately describing the behavior of the Exchange's System. In particular, the Exchange believes that the proposed rule changes will provide greater clarity to Members and the public regarding the Exchange's Rules, and it is in the public interest for rules to be accurate and concise so as to eliminate the potential for confusion.

Additionally, the Exchange believes that although MIAX Emerald rules may, in certain instances, intentionally differ from MIAX PEARL rules, the proposed changes will promote uniformity with MIAX PEARL with respect to rules that are intended to be identical. MIAX Emerald and MIAX PEARL may have a number of Members in common, and where feasible the Exchange intends to implement similar behavior to provide consistency between MIAX PEARL and MIAX Emerald so as to avoid confusion among Members.

### *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 designed to add additional clarity and detail to the Exchange's rules.

The Exchange does not believe that the proposed rule change will impose any burden on inter-market competition as the Rules apply equally to all

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> See Exchange Rule 519(a)(3).

<sup>10</sup> The term "Member" means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed "members" under the Exchange Act. See Exchange Rule 100.

<sup>7</sup> 15 U.S.C. 78f(b).

Exchange Members. The proposed rule change is not a competitive filing and is intended to enhance the protection of investors by ensuring that the rule clearly and accurately describes the scenarios when a limit order to buy or a limit order to sell will be rejected by the Exchange's System. Additionally, the proposed rule change provides examples of hypothetical scenarios to provide additional detail and clarity to the Exchange's rulebook.

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

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act<sup>11</sup> and Rule 19b-4(f)(6)<sup>12</sup> thereunder.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days from the date of filing. However, Rule 19b-4(f)(6)(iii)<sup>13</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay and designate the proposal operative on March 1, 2019, to coincide with the planned commencement date of operation of the Exchange. The Commission believes that the waiver of the 30-day operative delay is consistent with the protection of investors and the public interest and hereby waives the 30-day operative delay and designates the proposal operative on March 1, 2019.<sup>14</sup>

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>13</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>14</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-EMERALD-2019-03 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-EMERALD-2019-03. 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-EMERALD-2019-03 and should be submitted on or before March 18, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Eduardo A. Aleman,**  
*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

**Sunshine Act Meetings**

**TIME AND DATE:** 2:00 p.m. on Thursday, February 28, 2019.

**PLACE:** The meeting will be held at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

**STATUS:** This meeting will be closed to the public.

**MATTERS TO BE CONSIDERED:**

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Peirce, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matters of the closed meeting will be:

- Institution and settlement of injunctive actions;
- Institution and settlement of administrative proceedings;
- Resolution of litigation claims; and
- Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

**CONTACT PERSON FOR MORE INFORMATION:**

For further information and to ascertain what, if any, matters have been added, deleted or postponed; please contact Brent J. Fields from the Office of the Secretary at (202) 551-5400.

<sup>15</sup> 17 CFR 200.30-3(a)(12).