

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89927; File No. SR–EMERALD–2020–07]

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

September 21, 2020.

Pursuant to 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 September 8, 2020, MIAX Emerald, LLC (“MIAX Emerald” 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 Emerald 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/emerald>, at MIAX’s principal office, and at the Commission’s Public Reference Room.

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

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

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

###### 1. Purpose

The Exchange proposes to amend Section 1)a)i) of the Fee Schedule to lower the Simple Maker (as defined

below) rebates in Tier 4 for options transactions in Penny classes and non-Penny classes (as defined below) for executed Priority Customers<sup>3</sup> orders when the contra is an Affiliated<sup>4</sup> Market Maker.<sup>5</sup>

The proposed change is scheduled to become operative September 8, 2020.

###### Background

The Exchange currently assesses transaction rebates and fees to all market participants which are based upon a threshold tier structure (“Tier”) that is applicable to transaction fees. Tiers are determined on a monthly basis and are based on three alternative calculation methods, as defined in Section 1)a)ii) of the Fee Schedule. The calculation method that results in the highest Tier achieved by the Member shall apply to all Origin types by the Member. The monthly volume thresholds for each method, associated with each Tier, are calculated as the

<sup>3</sup> “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 Interpretation and Policy .01.

<sup>4</sup> “Affiliate” means (i) an affiliate of a Member of at least 75% common ownership between the firms as reflected on each firm’s Form BD, Schedule A, or (ii) the Appointed Market Maker of an Appointed EEM (or, conversely, the Appointed EEM of an Appointed Market Maker). An “Appointed Market Maker” is a MIAX Emerald Market Maker (who does not otherwise have a corporate affiliation based upon common ownership with an EEM) that has been appointed by an EEM and an “Appointed EEM” is an EEM (who does not otherwise have a corporate affiliation based upon common ownership with a MIAX Emerald Market Maker) that has been appointed by a MIAX Emerald Market Maker, pursuant to the following process. A MIAX Emerald Market Maker appoints an EEM and an EEM appoints a MIAX Emerald Market Maker, for the purposes of the Fee Schedule, by each completing and sending an executed Volume Aggregation Request Form by email to [membership@miaxoptions.com](mailto:membership@miaxoptions.com) no later than 2 business days prior to the first business day of the month in which the designation is to become effective. Transmittal of a validly completed and executed form to the Exchange along with the Exchange’s acknowledgement of the effective designation to each of the Market Maker and EEM will be viewed as acceptance of the appointment. The Exchange will only recognize one designation per Member. A Member may make a designation not more than once every 12 months (from the date of its most recent designation), which designation shall remain in effect unless or until the Exchange receives written notice submitted 2 business days prior to the first business day of the month from either Member indicating that the appointment has been terminated. Designations will become operative on the first business day of the effective month and may not be terminated prior to the end of the month. Execution data and reports will be provided to both parties. See the Definitions Section of the Fee Schedule.

<sup>5</sup> “Market Maker” refers to “Lead Market Maker” (“LMM”), “Primary Lead Market Maker” (“PLMM”) and “Registered Market Maker” (“RMM”), collectively. See the Definitions Section of the Fee Schedule and Exchange Rule 100.

total monthly volume executed by the Member in all options classes on MIAX Emerald in the relevant Origins and/or applicable liquidity, not including Excluded Contracts,<sup>6</sup> (as the numerator) expressed as a percentage of (divided by) Customer Total Consolidated Volume (“CTCV”) (as the denominator). CTCV means Customer Total Consolidated Volume calculated as the total national volume cleared at The Options Clearing Corporation (“OCC”) in the Customer range in those classes listed on MIAX Emerald for the month for which fees apply, excluding volume cleared at the OCC in the Customer range executed during the period of time in which the Exchange experiences an “Exchange System Disruption”<sup>7</sup> (solely in the option classes of the affected Matching Engine).<sup>8</sup> In addition, the per contract transaction rebates and fees shall be applied retroactively to all eligible volume once the Tier has been reached by the Member. Members that place resting liquidity, *i.e.*, orders on the MIAX Emerald System, will be assessed the specified “maker” rebate or fee (each a “Maker”) and Members that execute against resting liquidity will be assessed the specified “taker” fee or rebate (each a “Taker”).<sup>9</sup> Members are also assessed lower transaction fees and smaller rebates for order executions in standard option classes in the Penny Interval Program<sup>10</sup> (“Penny classes”) than for order executions in standard option classes which are not in the

<sup>6</sup> “Excluded Contracts” means any contracts routed to an away market for execution. See the Definitions Section of the Fee Schedule.

<sup>7</sup> The term “Exchange System Disruption” means an outage of a Matching Engine or collective Matching Engines for a period of two consecutive hour or more, during trading hours. See the Definitions Section of the Fee Schedule.

<sup>8</sup> A “Matching Engine” is a part of the MIAX Emerald electronic system that processes options orders and trades on a symbol-by-symbol basis. Some Matching Engines will process option classes with multiple root symbols, and other Matching Engines may be dedicated to one single option root symbol (for example, options on SPY may be processed by one single Matching Engine that is dedicated only to SPY). A particular root symbol may only be assigned to a single designated Matching Engine. A particular root symbol may not be assigned to multiple Matching Engines. See the Definitions Section of the Fee Schedule.

<sup>9</sup> For a Priority Customer complex order taking liquidity in both a Penny class and non-Penny class against Origins other than Priority Customer, the Priority Customer order will receive a rebate based on the Tier achieved.

<sup>10</sup> See Securities Exchange Act Release No. 88993 (June 2, 2020), 85 FR 35145 (June 8, 2020) (SR–EMERALD–2020–05) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 510, Minimum Price Variations and Minimum Trading Increments, To Conform the Rule to Section 3.1 of the Plan for the Purpose of Developing and Implementing Procedures Designed To Facilitate the Listing and Trading of Standardized Options).

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

<sup>2</sup> 17 CFR 240.19b–4.

Penny Interval Program (“non-Penny classes”), for which Members will be

assessed a higher transaction fees and larger rebates.

assessed according to the following tables:

Currently, transaction rebates and fees for Penny and non-Penny classes are

MEMBERS AND THEIR AFFILIATES IN PENNY CLASSES SIMPLE/COMPLEX/PRIME/CPRIME

Origin	Tier	Simple		Complex #		PRIME/cPRIME ◊			
		Maker	Taker ^	Maker (contra origins ex priority customer)	Maker (contra priority customer origin)	Taker	Agency	Contra	Responder
Market Maker .....	1	(\$0.35)	\$0.50	\$0.10	\$0.47	\$0.50	\$0.05	\$0.05	\$0.05
	2	(0.35)	0.50	0.10	0.47	0.50	0.05	0.05	0.05
	3	(0.35)	0.50	0.10	0.47	0.50	0.05	0.05	0.05
	4	(0.45)	0.50	0.10	0.47	0.50	0.05	0.05	0.05
Non-MIAX Emerald Market Maker .....	1	(0.25)	0.50	0.20	0.50	0.50	0.05	0.05	0.05
	2	(0.25)	.50	0.20	0.50	0.50	0.05	0.05	0.05
	3	(0.25)	0.50	0.20	0.50	0.50	0.05	0.05	0.05
	4	(0.25)	0.50	0.20	0.50	0.50	0.05	0.05	0.05
Firm Proprietary/Broker-Dealer ..	1	(0.25)	0.50	0.20	0.50	0.50	0.05	0.05	0.05
	2	(0.25)	0.50	0.20	0.50	0.50	0.05	0.05	0.05
	3	(0.25)	0.50	0.20	0.50	0.50	0.05	0.05	0.05
	4	(0.25)	0.50	0.20	0.50	0.50	0.05	0.05	0.05
Non-Priority Customer .....	1	(0.25)	0.50	0.20	0.50	0.50	0.05	0.05	0.05
	2	(0.25)	0.50	0.20	0.50	0.50	0.05	0.05	0.05
	3	(0.25)	0.50	0.20	0.50	0.50	0.05	0.05	0.05
	4	(0.25)	0.50	0.20	0.50	0.50	0.05	0.05	0.05
Priority Customer * .....	1	▽(0.43)	0.50	(0.25)	(0.25)	(0.25)	0.00	0.05	0.05
	2	▽(0.43)	0.50	(0.40)	(0.40)	(0.40)	0.00	0.05	0.05
	3	▽(0.43)	0.50	(0.45)	(0.45)	(0.45)	0.00	0.05	0.05
	4	(0.53)	0.50	(0.50)	(0.50)	(0.50)	0.00	0.05	0.05

MEMBERS AND THEIR AFFILIATES IN NON-PENNY CLASSES SIMPLE/COMPLEX/PRIME/CPRIME

Origin	Tier	Simple		Complex #		PRIME/cPRIME ◊			
		Maker	Taker ^	Maker (contra origins ex priority customer)	Maker (contra priority customer origin)	Taker ~	Agency	Contra	Responder
Market Maker .....	1	(\$0.45)	\$1.05	\$0.20	\$0.86	\$0.88	\$0.05	\$0.05	\$0.05
	2	(0.45)	1.05	0.20	0.86	0.88	0.05	0.05	0.05
	3	(0.45)	1.05	0.20	0.86	0.86	0.05	0.05	0.05
	4	(0.75)	1.05	0.20	0.86	0.86	0.05	0.05	0.05
Non-MIAX Emerald Market Maker .....	1	(0.25)	1.05	0.20	0.88	0.88	0.05	0.05	0.05
	2	(0.25)	1.05	0.20	0.88	0.88	0.05	0.05	0.05
	3	(0.25)	1.05	0.20	0.88	0.88	0.05	0.05	0.05
	4	(0.25)	1.05	0.20	0.88	0.88	0.05	0.05	0.05
Firm Proprietary/Broker-Dealer ..	1	(0.25)	1.05	0.20	0.88	0.88	0.05	0.05	0.05
	2	(0.25)	1.05	0.20	0.88	0.88	0.05	0.05	0.05
	3	(0.25)	1.05	0.20	0.88	0.88	0.05	0.05	0.05
	4	(0.25)	1.05	0.20	0.88	0.88	0.05	0.05	0.05
Non-Priority Customer .....	1	(0.25)	1.05	0.20	0.88	0.88	0.05	0.05	0.05
	2	(0.25)	1.05	0.20	0.88	0.88	0.05	0.05	0.05
	3	(0.25)	1.05	0.20	0.88	0.88	0.05	0.05	0.05
	4	(0.25)	1.05	0.20	0.88	0.88	0.05	0.05	0.05
Priority Customer * .....	1	(0.85)	0.85	(0.40)	(0.40)	(0.40)	0.00	0.05	0.05
	2	(0.85)	0.85	(0.60)	(0.60)	(0.60)	0.00	0.05	0.05
	3	(0.85)	0.85	(0.70)	(0.70)	(0.75)	0.00	0.05	0.05
	4	(1.05)	0.85	(0.87)	(0.87)	(0.85)	0.00	0.05	0.05

^ Contra to Priority Customer Simple Orders, Origins ex Priority Customer Simple Orders will be charged \$0.50 and Priority Customer Simple Orders will be charged \$0.50 in Penny classes, and Origins ex Priority Customer Simple Orders will be charged \$1.10 and Priority Customer Simple Orders will be charged \$0.85 in Non-Penny classes.

\* Priority Customer Complex Orders contra to Priority Customer Complex Orders are neither charged nor rebated. Priority Customer Complex Orders that leg into the Simple book are neither charged nor rebated.

~ A \$0.05 Complex surcharge for Origins ex Priority Customer for Complex Orders that take liquidity from the Complex Order Book in Non-Penny classes.

# For orders in a Complex Auction, Priority Customer Complex Orders will receive the Complex Taker rebate based on the tier achieved when contra to an Origin that is not a Priority Customer. Origins that are not a Priority Customer will be charged the applicable Maker fee depending on the contra, based on the tier achieved.

◇ For PRIME and cPRIME, the per contract rebate or fee for the preexisting contra-side interest that trades with the Agency side will be waived. PRIME/cPRIME Responder side interest that trades with unrelated Agency side interest trades as Taker will be subject to Simple or Complex rates, as applicable.

▽ Simple Maker rebate in SPY, QQQ and IWM is (\$0.45) for Priority Customer Origin in Tiers 1, 2 and 3.

Notes Accompanying Tables Above

During the Opening Rotation and the ABBO uncrossing, the per contract rebate or fee will be waived for all Origins.

Proposed Changes

The Exchange now proposes to lower the Simple Maker rebates in Tier 4 for options transactions in Penny classes and non-Penny classes for executed Priority Customers orders when the contra is an Affiliated Market Maker. Specifically, the Exchange proposes to lower the Simple Maker rebate for executed Priority Customer orders in options in Penny classes in Tier 4 from (\$0.53) to (\$0.49) when the contra is an Affiliated Market Maker. The Exchange also proposes to lower the Simple Maker rebate for executed Priority Customer orders in options in non-Penny classes in Tier 4 from (\$1.05) to (\$0.95) when the contra is an Affiliated Market Maker.

In order to differentiate between the proposed lower Tier 4 Simple Maker rebate in Penny and non-Penny classes when the contra is an Affiliated Market Maker, the Exchange proposes to insert two new symbols after the symbol

“▽”<sup>11</sup> immediately following the table of rebates and fees in Section 1)a)i of the Fee Schedule. In particular, the Exchange proposes to adopt new symbol “□,” for the Penny classes table and the following explanatory sentences: “This Maker rebate is for executed Priority Customer Simple Orders when the contra is not an Affiliated Market Maker. When the contra is an Affiliated Market Maker, this Maker rebate for executed Priority Customer Simple Orders will be (\$0.49).” The Exchange also proposes to adopt new symbol “■,” for the non-Penny classes table and the following explanatory sentences: “This Maker rebate is for executed Priority Customer Simple Orders when the contra is not an Affiliated Market Maker. When the contra is an Affiliated Market Maker, this Maker rebate for executed Priority Customer Simple Orders will be (\$0.95).” Accordingly, the Exchange proposes to insert the new symbols “□” and “■” as footnotes for

the current Simple Maker rebates for Priority Customer orders in options in Penny and non-Penny classes in Tier 4 of (\$0.53) and (\$1.05), respectively.

The purpose of adjusting the specified Simple Maker rebates is for business and competitive reasons. In order to attract order flow, the Exchange initially set its Maker rebates and Taker fees so that they were meaningfully higher/lower than other options exchanges that operate comparable maker/taker pricing models.<sup>12</sup> The Exchange now believes that it is appropriate to further adjust these specified Maker rebates so that they are more in line with other exchanges, but will still remain highly competitive such that they should enable the Exchange to continue to attract order flow and maintain market share.<sup>13</sup>

With the proposed changes, Section 1)a)i of the Fee Schedule will be as follows:

MEMBERS AND THEIR AFFILIATES IN PENNY CLASSES SIMPLE/COMPLEX/PRIME/CPRIME

Origin	Tier	Simple		Complex #		PRIME/cPRIME ◇			
		Maker	Taker ^	Maker (contra origins ex priority customer)	Maker (contra priority customer origin)	Taker	Agency	Contra	Responder
Market Maker .....	1	(\$0.35)	\$0.50	\$0.10	\$0.47	\$0.50	\$0.05	\$0.05	\$0.05
	2	(0.35)	0.50	0.10	0.47	0.50	0.05	0.05	0.05
	3	(0.35)	0.50	0.10	0.47	0.50	0.05	0.05	0.05
	4	(0.45)	0.50	0.10	0.47	0.50	0.05	0.05	0.05
Non-MIAX Emerald Market Maker .....	1	(0.25)	0.50	0.20	0.50	0.50	0.05	0.05	0.05
	2	(0.25)	0.50	0.20	0.50	0.50	0.05	0.05	0.05
	3	(0.25)	0.50	0.20	0.50	0.50	0.05	0.05	0.05
	4	(0.25)	0.50	0.20	0.50	0.50	0.05	0.05	0.05
Firm Proprietary/Broker-Dealer ..	1	(0.25)	0.50	0.20	0.50	0.50	0.05	0.05	0.05
	2	(0.25)	0.50	0.20	0.50	0.50	0.05	0.05	0.05
	3	(0.25)	0.50	0.20	0.50	0.50	0.05	0.05	0.05
	4	(0.25)	0.50	0.20	0.50	0.50	0.05	0.05	0.05
Non-Priority Customer .....	1	(0.25)	0.50	0.20	0.50	0.50	0.05	0.05	0.05
	2	(0.25)	0.50	0.20	0.50	0.50	0.05	0.05	0.05
Priority Customer * .....	4	(0.25)	0.50	0.20	0.50	0.50	0.05	0.05	0.05
	1	▽ (0.43)	0.50	(0.25)	(0.25)	(0.25)	0.00	0.05	0.05
	2	▽ (0.43)	0.50	(0.40)	(0.40)	(0.40)	0.00	0.05	0.05
	3	▽ (0.43)	0.50	(0.45)	(0.45)	(0.45)	0.00	0.05	0.05
	4	□ (0.53)	0.50	(0.50)	(0.50)	(0.50)	0.00	0.05	0.05

<sup>11</sup> See Fee Schedule, Section 1)a)i.

<sup>12</sup> See Securities Exchange Act Release No. 85393 (March 21, 2019), 84 FR 11599 (March 27, 2019) (SR-EMERALD-2019-15).

<sup>13</sup> See Cboe BZX Options Exchange Fee Schedule, under “Transaction Fees.”

MEMBERS AND THEIR AFFILIATES IN NON-PENNY CLASSES SIMPLE/COMPLEX/PRIME/CPRIME

Origin	Tier	Simple		Complex #		PRIME/cPRIME ◊			
		Maker	Taker ^	Maker (contra origins ex priority customer)	Maker (contra priority customer origin)	Taker ~	Agency	Contra	Responder
Market Maker .....	1	(\$0.45)	\$1.05	\$0.20	\$0.86	\$0.88	\$0.05	\$0.05	\$0.05
	2	(0.45)	1.05	0.20	0.86	0.88	0.05	0.05	0.05
	3	(0.45)	1.05	0.20	0.86	0.86	0.05	0.05	0.05
	4	(0.75)	1.05	0.20	0.86	0.86	0.05	0.05	0.05
Non-MIAX Emerald Market Maker .....	1	(0.25)	1.05	0.20	0.88	0.88	0.05	0.05	0.05
	2	(0.25)	1.05	0.20	0.88	0.88	0.05	0.05	0.05
	3	(0.25)	1.05	0.20	0.88	0.88	0.05	0.05	0.05
	4	(0.25)	1.05	0.20	0.88	0.88	0.05	0.05	0.05
Firm Proprietary/Broker-Dealer ..	1	(0.25)	1.05	0.20	0.88	0.88	0.05	0.05	0.05
	2	(0.25)	1.05	0.20	0.88	0.88	0.05	0.05	0.05
	3	(0.25)	1.05	0.20	0.88	0.88	0.05	0.05	0.05
	4	(0.25)	1.05	0.20	0.88	0.88	0.05	0.05	0.05
Non-Priority Customer .....	1	(0.25)	1.05	0.20	0.88	0.88	0.05	0.05	0.05
	2	(0.25)	1.05	0.20	0.88	0.88	0.05	0.05	0.05
	3	(0.25)	1.05	0.20	0.88	0.88	0.05	0.05	0.05
	4	(0.25)	1.05	0.20	0.88	0.88	0.05	0.05	0.05
Priority Customer * .....	1	(0.85)	0.85	(0.40)	(0.40)	(0.40)	0.00	0.05	0.05
	2	(0.85)	0.85	(0.60)	(0.60)	(0.60)	0.00	0.05	0.05
	3	(0.85)	0.85	(0.70)	(0.70)	(0.75)	0.00	0.05	0.05
	4	■(1.05)	0.85	(0.87)	(0.87)	(0.85)	0.00	0.05	0.05

^ Contra to Priority Customer Simple Orders, Origins ex Priority Customer Simple Orders will be charged \$0.50 and Priority Customer Simple Orders will be charged \$0.50 in Penny classes, and Origins ex Priority Customer Simple Orders will be charged \$1.10 and Priority Customer Simple Orders will be charged \$0.85 in Non-Penny classes.

\* Priority Customer Complex Orders contra to Priority Customer Complex Orders are neither charged nor rebated. Priority Customer Complex Orders that leg into the Simple book are neither charged nor rebated.

~ A \$0.05 Complex surcharge for Origins ex Priority Customer for Complex Orders that take liquidity from the Complex Order Book in Non-Penny classes.

# For orders in a Complex Auction, Priority Customer Complex Orders will receive the Complex Taker rebate based on the tier achieved when contra to an Origin that is not a Priority Customer. Origins that are not a Priority Customer will be charged the applicable Maker fee depending on the contra, based on the tier achieved.

◊ For PRIME and cPRIME, the per contract rebate or fee for the preexisting contra-side interest that trades with the Agency side will be waived. PRIME/cPRIME Responder side interest that trades with unrelated Agency side interest trades as Taker will be subject to Simple or Complex rates, as applicable.

▽ Simple Maker rebate in SPY, QQQ and IWM is (\$0.45) for Priority Customer Origin in Tiers 1, 2 and 3.

□ This Maker rebate is for executed Priority Customer Simple Orders when contra is not an Affiliated Market Maker. When the contra is an Affiliated Market Maker, this Maker rebate for executed Priority Customer Simple Orders will be (\$0.49).

■ This Maker rebate is for executed Priority Customer Simple Orders when the contra is not an Affiliated Market Maker. When the contra is an Affiliated Market Maker, this Maker rebate for executed Priority Customer Simple Orders will be (\$0.95).

Notes Accompanying Tables Above

During the Opening Rotation and the ABBO uncrossing, the per contract rebate or fee will be waived for all Origins.

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>14</sup>

There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more

than approximately 16% market share.<sup>15</sup> Therefore, no exchange possesses significant pricing power. More specifically, for the month of August, the Exchange had a market share of approximately 3.24% of executed volume of multiply-listed equity options.<sup>16</sup>

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can discontinue or reduce use of certain categories of products and services, terminate an existing membership or determine to not become a new member,

and/or shift order flow, in response to transaction fee changes. For example, on February 28, 2019, the Exchange’s affiliate, MIAX PEARL, LLC (“MIAX PEARL”) filed with the Commission a proposal to increase Taker fees in certain Tiers for options transactions in certain Penny classes for Priority Customers and decrease Maker rebates in certain Tiers for options transactions in Penny classes for Priority Customers (which fee was to be effective March 1, 2019).<sup>17</sup> MIAX PEARL experienced a decrease in total market share for the month of March 2019, after the proposal went into effect. Accordingly, the Exchange believes that the MIAX PEARL March 1, 2019 fee change, to increase certain transaction fees and

<sup>14</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

<sup>15</sup> The Options Clearing Corporation (“OCC”) publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available here: <https://www.theocc.com/market-data/volume/default.jsp>.

<sup>16</sup> See *id.*

<sup>17</sup> See Securities Exchange Act Release No. 85304 (March 13, 2019), 84 FR 10144 (March 19, 2019) (SR-PEARL-2019-07).

decrease certain transaction rebates, may have contributed to the decrease in MIAX PEARL's market share and, as such, the Exchange believes competitive forces constrain the Exchange's, and other options exchanges, ability to set transaction fees and market participants can shift order flow based on fee changes instituted by the exchanges. The Exchange also notes that at least one other competing exchange similarly provides for different pricing dependent upon whether the executing buyer and seller are the same market participant or have some form of common ownership.<sup>18</sup>

## 2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act<sup>19</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act,<sup>20</sup> in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange members and issuers and other persons using its facilities, and 6(b)(5) of the Act,<sup>21</sup> 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 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 to decrease its Simple Maker rebates in Tier 4 for options transactions in Penny and non-Penny classes for Priority Customers orders when trading contra to an Affiliated Market Maker provides for the equitable allocation of reasonable dues and fees and is not unfairly discriminatory for the following reasons. The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."<sup>22</sup>

There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than approximately 16% of the market share of executed volume of multiply-listed equity and ETF options trades based on the reported trade volumes for the month of August.<sup>23</sup> Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, for the month of August, the Exchange had a market share of approximately 3.24% of executed volume of multiply-listed equity options.<sup>24</sup> The Exchange cannot predict with certainty the number of market participants that would qualify for the lower Simple Maker rebates as Members<sup>25</sup> may continually shift among the different Tiers from month to month.

The Exchange believes that the ever-shifting market shares among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of

products, in response to transaction and/or non-transaction fee changes. For example, on February 28, 2019, the Exchange's affiliate, MIAX PEARL, filed with the Commission a proposal to increase Taker fees in certain Tiers for options transactions in certain Penny classes for Priority Customers and decrease Maker rebates in certain Tiers for options transactions in Penny classes for Priority Customers (which fee was to be effective March 1, 2019).<sup>26</sup> MIAX PEARL experienced a decrease in total market share for the month of March 2019, after the proposal went into effect. Accordingly, the Exchange believes that the MIAX PEARL March 1, 2019 fee change, to increase certain transaction fees and decrease certain transaction rebates, may have contributed to the decrease in MIAX PEARL's market share and, as such, the Exchange believes competitive forces constrain the Exchange's, and other options exchanges, ability to set transaction fees and market participants can shift order flow based on fee changes instituted by the exchanges.

The Exchange believes its proposal to decrease the Simple Maker rebates in Tier 4 for options transactions in Penny and non-Penny classes for Priority Customers is reasonable, equitable and not unfairly discriminatory because all similarly situated market participants in the same Origin type are subject to the same tiered Maker rebates and Taker fees and access to the Exchange is offered on terms that are not unfairly discriminatory. The Exchange believes it is equitable and not unfairly discriminatory to reduce the Simple Maker rebates to Priority Customer orders in Penny and non-Penny classes for competitive and business reasons because the Exchange initially set its Simple Maker rebates for such orders higher than certain other options exchanges that operate comparable maker/taker pricing models.<sup>27</sup> The Exchange now believes that it is appropriate to further decrease the specified Simple Maker rebates so that they are more in line with other exchanges, and will still remain highly competitive such that they should enable the Exchange to continue to attract order flow and maintain market share.<sup>28</sup>

Furthermore, the proposed decrease to the Simple Maker rebates for Priority Customers promotes just and equitable principles of trade, fosters cooperation and coordination with persons engaged in facilitating transactions in securities,

<sup>18</sup> See Nasdaq Options Pricing Schedule, Options 7, Section 2(1), note 2 (Participants that add 1.30% of Customer, Professional, Firm, Broker-Dealer or Non-NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of total industry customer equity and ETF option ADV contracts per day in a month will be subject to the following pricing applicable to executions: A \$0.48 per contract Penny Pilot Options Fee for Removing Liquidity when the Participant is (i) both the buyer and the seller or (ii) the Participant removes liquidity from another Participant under Common Ownership. Participants that add 1.50% of Customer, Professional, Firm, Broker-Dealer or Non-NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of total industry customer equity and ETF option ADV contracts per day in a month and meet or exceed the cap for The Nasdaq Stock Market Opening Cross during the month will be subject to the following pricing applicable to executions less than 10,000 contracts: A \$0.32 per contract Penny Pilot Options Fee for Removing Liquidity when the Participant is (i) both the buyer and seller or (ii) the Participant removes liquidity from another Participant under Common Ownership. Participants that add 1.75% of Customer, Professional, Firm, Broker-Dealer or Non-NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of total industry customer equity and ETF option ADV contracts per day in a month will be subject to the following pricing applicable to executions less than 10,000 contracts: A \$0.32 per contract Penny Pilot Options Fee for Removing Liquidity when the Participant is (i) both the buyer and seller or (ii) the Participant removes liquidity from another Participant under Common Ownership.)

<sup>19</sup> 15 U.S.C. 78f(b).

<sup>20</sup> 15 U.S.C. 78f(b)(4).

<sup>21</sup> 15 U.S.C. 78f(b)(1) and (b)(5).

<sup>22</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

<sup>23</sup> See *supra* note 15.

<sup>24</sup> See *id.*

<sup>25</sup> "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 the Definitions Section of the Fee Schedule and Exchange Rule 100.

<sup>26</sup> See *supra* note 17.

<sup>27</sup> See *supra* note 12.

<sup>28</sup> See *supra* note 13.

and protects investors and the public interest, because even with the decrease, the Exchange's proposed Simple Maker rebates for such orders still remain highly competitive with certain other options exchanges offering comparable pricing models, and should enable the Exchange to continue to attract order flow and maintain market share.<sup>29</sup> The Exchange believes that the amount of such fees, as proposed to be decreased, will continue to encourage those market participants to send orders to the Exchange.

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

The Exchange does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed changes in the specified Simple Maker rebates for the applicable market participants should continue to encourage the provision of liquidity that enhances the quality of the Exchange's market and increases the number of trading opportunities on the Exchange for all participants who will be able to compete for such opportunities. The proposed rule changes should enable the Exchange to continue to attract and compete for order flow with other exchanges. However, this competition does not create an undue burden on competition but rather offers all market participants the opportunity to receive the benefit of competitive pricing.

The proposed decreases for certain Simple Maker rebates are intended to keep the Exchange's fees highly competitive with those of other exchanges, and to encourage liquidity and should enable the Exchange to continue to attract and compete for order flow with other exchanges. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its rebates and fees to remain competitive with other exchanges and to attract order flow. The Exchange believes that the proposed rule changes reflect this competitive environment because they modify the Exchange's fees in a manner that encourages market participants to continue to provide liquidity and to send order flow to the Exchange.

#### *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**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>30</sup> and Rule 19b-4(f)(2)<sup>31</sup> 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-EMERALD-2020-07 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-2020-07. 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-2020-07 and should be submitted on or before October 16, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>32</sup>

**J. Matthew DeLesDernier,**  
Assistant Secretary.

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#### **SECURITIES AND EXCHANGE COMMISSION**

[SEC File No. 270-485, OMB Control No. 3235-0547]

#### **Submission for OMB Review; Comment Request**

Extension:  
"Investor Form"

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request to approve the collection of information discussed below.

Each year the Commission receives several thousand contacts from investors who have complaints or questions on a wide range of investment-related issues. To make it easier for the public to contact the agency electronically, the Commission's Office of Investor Education and Advocacy ("OIEA") created an electronic form (the Investor Form) that provides drop down options to choose from in order to categorize the investor's complaint or question, and may also

<sup>29</sup> See *id.*

<sup>30</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>31</sup> 17 CFR 240.19b-4(f)(2).

<sup>32</sup> 17 CFR 200.30-3(a)(12).