

market participants consistent with the Act.<sup>15</sup>

#### IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>16</sup> that the proposed rule change (SR–NYSE–2021–53) be, and hereby is, approved.

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

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93633; File No. SR–EMERALD–2021–41]

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

November 19, 2021.

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 November 8, 2021, MIAX Emerald, LLC (“MIAX Emerald” 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 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 <https://www.miaxoptions.com/rule-filings/emerald>, at MIAX’s principal office, and at the Commission’s Public Reference Room.

<sup>15</sup> Shareholders should have access to a company’s governing documents that indicate how abstentions are treated under the applicable voting standard, such as articles of incorporation and bylaws, as they are required to be filed as exhibits under Item 601 of Regulation S–K for domestic issuers and under Form 20–F for foreign private issuers. See also *supra* note 5 and Item 21 of Schedule 14A that applies to domestic issuers.

<sup>16</sup> Id.

<sup>17</sup> 17 CFR 200.30–3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b–4.

#### 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) amend the Fee Schedule to amend the exchange groupings of options exchanges within the routing fee table in Section 1(b) of the Fee Schedule, Fees for Customer Orders Routed to another Options Exchange; and (ii) make a minor, non-substantive edit to correct a typographical error. The Exchange initially filed this proposal on October 27, 2021 (SR–EMERALD–2021–35) and withdrew such filing on November 8, 2021. The Exchange proposes to implement the fee change effective November 8, 2021.

Currently, the Exchange assesses routing fees based upon (i) the origin type of the order, (ii) whether or not it is an order for standard option classes in the Penny Interval Program<sup>3</sup> (“Penny classes”) or an order for standard option classes which are not in the Penny Interval Program (“Non-Penny classes”) (or other explicitly identified classes), and (iii) to which away market it is being routed. This assessment practice is identical to the routing fees assessment practice currently utilized by the Exchange’s affiliates, Miami International Securities Exchange, LLC (“MIAX”) and MIAX PEARL, LLC (“MIAX Pearl”). This is also similar to the methodology utilized by the Cboe BZX Exchange, Inc. (“Cboe BZX Options”), a competing options exchange, in assessing routing fees. Cboe BZX Options has exchange

<sup>3</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).

groupings in its fee schedule, similar to those of the Exchange, whereby several exchanges are grouped into the same category, dependent upon the order’s origin type and whether it is a Penny or Non-Penny class.<sup>4</sup>

As a result of conducting a periodic review of the current transaction fees and rebates charged by away markets, the Exchange has determined to amend the exchange groupings of options exchanges within the routing fee table to better reflect the associated costs of routing customer orders to those options exchanges for execution.<sup>5</sup> In particular, the Exchange proposes to amend the exchange groupings in the first row of the table identified as, “Routed, Priority Customer, Penny Program,” to relocate Nasdaq BX Options from the first row of the table to the second, also identified as, “Routed, Priority Customer, Penny Program.” The impact of this proposed change will be that the routing fee for Priority Customer orders in the Penny Program that are routed to Nasdaq BX Options will increase from \$0.15 to \$0.65. The purpose of the proposed rule change is to adjust the routing fee for certain orders routed to Nasdaq BX Options to reflect the associated costs for that routed execution.

Next, the Exchange proposes to amend the exchange groupings in the third row of the table, identified as “Routed, Priority Customer, Non-Penny Program,” to relocate Nasdaq BX Options from the third row of the table to the fourth, also identified as, “Routed, Priority Customer, Non-Penny Program.” The impact of this proposed change will be that the routing fee for Priority Customer orders in the Non-Penny Program that are routed to Nasdaq BX Options will increase from \$0.15 to \$1.00. The purpose of the proposed rule change is to adjust the routing fee for certain orders routed to Nasdaq BX Options to reflect the associated costs for that routed execution.

Next, the Exchange proposes to amend the exchange groupings in the sixth row of the table identified as, “Routed, Public Customer that is not a Priority Customer, Non-Penny Program,” to relocate Nasdaq ISE from

<sup>4</sup> See Cboe U.S. Options Fee Schedules, BZX Options, effective August 2, 2021, “Fee Codes and Associated Fees,” at [https://www.cboe.com/us/options/membership/fee\\_schedule/bzx/](https://www.cboe.com/us/options/membership/fee_schedule/bzx/).

<sup>5</sup> Nasdaq BX established a Customer Taker fee of \$0.46 in Penny Classes and \$0.65 in Non-Penny Classes. See Securities Exchange Act Release No. 91473 (April 5, 2021), 86 FR 18562 (April 9, 2021) (SR–BX–2021–009). Nasdaq BX recently increased the Customer Taker fee in Non-Penny Classes from \$0.65 to \$0.79. See Securities Exchange Act Release No. 93121 (September 24, 2021), 86 FR 54259 (September 30, 2021) (SR–BX–2021–040).

the exchange groupings in the sixth row of the table to the seventh row of the table, also identified as “Routed, Public Customer that is not a Priority Customer, Non-Penny Program.” The impact of this proposed change will be that the Exchange routing fee for Public Customer orders in the Non-Penny Program that are routed to Nasdaq ISE will increase from \$1.00 to \$1.15. The purpose of the proposed rule change is to adjust the routing fee for certain orders routed to Nasdaq ISE to reflect the associated costs for that routed execution.

Additionally, the Exchange proposes to amend the exchange groupings in the seventh row of the table, identified as “Routed, Public Customer that is not a Priority Customer, Non-Penny Program,” to relocate Nasdaq BX Options and MIAX Pearl to the eighth row of the table, also identified as, “Routed, Public Customer that is not a Priority Customer, Non-Penny Program.” The impact of this proposed change will be that the routing fee for Public Customer orders that are not Priority Customer orders in the Non-Penny Program that are routed to

Nasdaq BX Options or MIAX Pearl will increase from \$1.15 to \$1.25. The purpose of the proposed rule change is to adjust the routing fee for certain orders routed to Nasdaq BX Options or MIAX Pearl to reflect the associated costs for that routed execution. The Exchange notes that no options exchanges were removed from the routing fee table entirely, with the only change being the change in categorization.

Accordingly, with the proposed change, the routing fee table will be as follows:

Description	Fees
Routed, Priority Customer, Penny Program, to: NYSE American, BOX, Cboe, Cboe EDGX Options, MIAX, Nasdaq MRX, Nasdaq PHLX (except SPY) .....	\$0.15
Routed, Priority Customer, Penny Program, to: NYSE Arca Options, Cboe BZX Options, Cboe C2, Nasdaq GEMX, Nasdaq ISE, NOM, Nasdaq PHLX (SPY only), MIAX Pearl, Nasdaq BX Options .....	0.65
Routed, Priority Customer, Non-Penny Program, to: NYSE American, BOX, Cboe, Cboe EDGX Options, MIAX, Nasdaq ISE, Nasdaq MRX, Nasdaq PHLX .....	0.15
Routed, Priority Customer, Non-Penny Program, to: NYSE Arca Options, Cboe BZX Options, Cboe C2, MIAX Pearl, Nasdaq GEMX, NOM, Nasdaq BX Options .....	1.00
Routed, Public Customer that is not a Priority Customer, Penny Program, to: NYSE American, NYSE Arca Options, Cboe BZX Options, BOX, Cboe, Cboe C2, Cboe EDGX Options, Nasdaq GEMX, Nasdaq ISE, Nasdaq MRX, MIAX, MIAX Pearl, NOM, Nasdaq PHLX, Nasdaq BX Options .....	0.65
Routed, Public Customer that is not a Priority Customer, Non-Penny Program, to: MIAX, NYSE American, Cboe, Nasdaq PHLX, Cboe EDGX Options .....	1.00
Routed, Public Customer that is not a Priority Customer, Non-Penny Program, to: Cboe C2, BOX, NOM, Nasdaq ISE .....	1.15
Routed, Public Customer that is not a Priority Customer, Non-Penny Program, to: Cboe BZX Options, NYSE Arca Options, Nasdaq GEMX, Nasdaq MRX, Nasdaq BX Options, MIAX Pearl .....	1.25

In determining to amend its routing transaction fees and rebates assessed by the away markets to which the Exchange routes orders, as well as the Exchange’s clearing costs, administrative, regulatory, and technical costs associated with routing orders to an away market. The Exchange uses unaffiliated routing brokers to route orders to the away markets; the costs associated with the use of these services are included in the routing fees specified in the Fee Schedule. This routing fees structure is not only similar to the Exchange’s affiliates, MIAX and MIAX Pearl, but is also comparable to the structure in place on at least one other competing options exchange, such as Cboe BZX Options.<sup>6</sup> The Exchange’s routing fee structure approximates the Exchange’s costs associated with routing orders to away markets. The per-contract transaction fee amount associated with each grouping closely

approximates the Exchange’s all-in cost (plus an additional, non-material amount)<sup>7</sup> to execute that corresponding contract at that corresponding exchange. The Exchange notes that in determining whether to adjust certain groupings of options exchanges in the routing fee table, the Exchange considered the transaction fees and rebates assessed by away markets, and determined to amend the grouping of exchanges that assess transaction fees for routed orders within a similar range. This same logic and structure applies to all of the groupings in the routing fee table. By utilizing the same structure that is utilized by the Exchange’s affiliates, MIAX and MIAX Pearl, the Exchange’s Members<sup>8</sup> will be assessed routing fees in a similar manner. The Exchange believes that this structure will minimize any confusion

as to the method of assessing routing fees between the three exchanges. The Exchange notes that its affiliates, MIAX and MIAX Pearl, will file to make the same proposed routing fee changes contained herein.

Finally, the Exchange proposes to make a minor non-substantive change to the title of the table in section 1(b) of the Fee Schedule, to capitalize the “a” in the word “another” such that the title of the table will be “Fees for Customer Orders Routed to Another Options Exchange.” This proposed change harmonizes the title of the table to that of the Exchange’s affiliate, MIAX Pearl.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act<sup>9</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>10</sup> in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act<sup>11</sup> in that it is

<sup>6</sup> See *supra* note 4. The Cboe BZX Options fee schedule has exchange groupings, whereby several exchanges are grouped into the same category, dependent on the order’s Origin type and whether it is a Penny or Non-Penny class. For example, Cboe BZX Options fee code RR covers routed customer orders in Non-Penny classes to NYSE Arca, Cboe C2, Nasdaq ISE, Nasdaq Gemini, MIAX Emerald, MIAX Pearl, or NOM, with a single fee of \$1.25 per contract.

<sup>7</sup> This amount is to cover de minimis differences/changes to away market fees (*i.e.*, minor increases or decreases) that would not necessitate a fee filing by the Exchange to re-categorize the away exchange into a different grouping. Routing fees are not intended to be a profit center for the Exchange and the Exchange’s target regarding routing fees and expenses is to be as close as possible to net neutral.

<sup>8</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 the Definitions section of the Fee Schedule and Exchange Rule 100.

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(4).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

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 and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes the proposed change to the exchange groupings of options exchanges within the routing fee table furthers the objectives of Section 6(b)(4) of the Act and is reasonable, equitable and not unfairly discriminatory because the proposed change will continue to apply in the same manner to all Members that are subject to routing fees. The Exchange believes the proposed change to the routing fee table exchange groupings furthers the objectives of Section 6(b)(5) of the Act and is designed to promote just and equitable principles of trade and is not unfairly discriminatory because the proposed change seeks to recoup costs that are incurred by the Exchange when routing customer orders to away markets on behalf of Members and does so in the same manner to all Members that are subject to routing fees. The costs to the Exchange to route orders to away markets for execution primarily includes transaction fees and rebates assessed by the away markets to which the Exchange routes orders, in addition to the Exchange's clearing costs, administrative, regulatory and technical costs. The Exchange believes that the proposed re-categorization of certain exchange groupings would enable the Exchange to recover the costs it incurs to route orders to Nasdaq BX Options, Nasdaq ISE, and MIAX Pearl. The per-contract transaction fee amount associated with each grouping approximates the Exchange's all-in cost (plus an additional, non-material amount) to execute the corresponding contract at the corresponding exchange.

The Exchange believes the proposed change to correct a typographical error in the title of the table in section 1(b) of the Fee Schedule, promotes 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 because the proposed change promotes clarity and consistency within the Fee Schedules of MIAX Emerald and its affiliate Exchange, MIAX Pearl. The Exchange believes this change will provide greater clarity to Members and the public regarding the Exchange's Fee Schedule and it is in the public interest for the Fee Schedule to be accurate and consistent so as to eliminate the potential for confusion.

#### *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. The Exchange believes its proposed re-categorization of certain exchange groupings is intended to enable the Exchange to recover the costs it incurs to route orders to away markets, particularly Nasdaq BX Options and Nasdaq ISE. The Exchange does not believe that this proposal imposes any unnecessary burden on competition because it seeks to recoup costs incurred by the Exchange when routing orders to away markets on behalf of Members and at least one other options exchange has a similar routing fees structure.<sup>12</sup>

#### *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 is effective upon filing pursuant to Section 19(b)(3)(A)<sup>13</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>14</sup> thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such 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 under Section 19(b)(2)(B)<sup>15</sup> of the Act to determine whether the proposed rule change 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-2021-41 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-2021-41. 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-2021-41 and should be submitted on or before December 17, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

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

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<sup>12</sup> See *supra* note 4.

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f)(2).

<sup>15</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>16</sup> 17 CFR 200.30-3(a)(12).