

proceedings to determine whether the proposed rule change should be approved or disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>124</sup>

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-94251; File No. SR-MIAX-2022-09]

### Self-Regulatory Organizations: Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by Miami International Securities Exchange, LLC To Amend Exchange Rule 1308, Supervision of Accounts

February 15, 2022.

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 3, 2022, Miami International Securities Exchange, LLC (“MIAX Options” or the “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 Exchange Rule 1308, Supervision of Accounts, to extend the temporary remote inspection relief for Members<sup>3</sup> to complete their branch office<sup>4</sup> inspections for the calendar years 2020 and 2021 to include calendar year 2022 through December 31, 2022.

The text of the proposed rule change is available on the Exchange’s website at

<http://www.miaxoptions.com/rule-filings/> at MIAX Options’ 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 1308, Supervision of Accounts, to extend the temporary remote inspection relief for Members to complete their branch office inspections for the calendar years 2020 and 2021 to include calendar year 2022 through December 31, 2022.

The COVID-19 pandemic has caused a host of operational disruptions to the securities industry and impacted Members, regulators, investors, and other stakeholders. In response to the pandemic, the Exchange began providing temporary relief to Members from specified Exchange Rules and requirements, including Exchange Rule 1308(d), Annual Branch Office Inspections.

Exchange Rules require Members to conduct branch<sup>5</sup> and non-branch office and location inspections pursuant to certain annual cycles. Specifically, pursuant to Exchange Rule 1308(d), each branch office that supervises one or more non-branch location must be inspected no less often than once each calendar year, unless it qualifies for certain exemptions.<sup>6</sup> Every branch

office, without exception, must be inspected at least once every three calendar-years. Members must maintain written reports of such inspections.<sup>7</sup>

In November 2020, the Exchange adopted Exchange Rule 1308(d)(4) and (d)(5), which has expired by its terms, that extended the time by which Members must complete their calendar year 2020 inspection obligations to March 31, 2021, without an on-site visit to the office or location.<sup>8</sup> The Exchange Rule 1308(d)(5) automatically sunset on December 31, 2021, to provide Members the option of satisfying their inspection obligations under Exchange Rule 1308 remotely for calendar years 2020 and 2021, subject to specified conditions,<sup>9</sup> due to the logistical challenges of going on-site while public health and safety concerns related to COVID-19 persisted. The Exchange notes that these temporary rules are substantively identical to the temporary inspection extension and remote relief rules filed by the Financial Industry Regulatory Authority (“FINRA”).<sup>10</sup>

While there are signs of improvement, much uncertainty remains. The emergence of the COVID-19 variants,<sup>11</sup> dissimilar vaccination rates throughout the United States, and the uptick in transmissions in many locations indicate that COVID-19 remains an active and real public health concern.<sup>12</sup>

surveillance system, the Member submits a proposal to the Exchange and receives, in writing, an exemption from the requirement in Exchange Rule 1308(d), pursuant to Exchange Rule 1308(e).

<sup>7</sup> See Exchange Rule 1308(d)(2).

<sup>8</sup> See Securities Exchange Act Release No. 90937 (January 25, 2021), 86 FR 6944 (January 15, 2021) (SR-MIAX-2021-01).

<sup>9</sup> See *id.*

<sup>10</sup> See Securities and Exchange Act Release Nos. 89188 (June 30, 2020), 85 FR 40713 (July 7, 2020) (SR-FINRA-2020-019); and 90454 (November 18, 2020), 85 FR 75097 (November 24, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2020-040).

<sup>11</sup> See The Centers for Disease Control and Prevention (“CDC”), What You Need to Know About Variants, <https://www.cdc.gov/coronavirus/2019-ncov/variants/variant.html> (stating, in part, that “the Delta variant causes more infections and spreads faster than earlier forms of the virus that causes COVID-19”) (updated September 3, 2021). See also CDC, The Possibility of COVID-19 Illness After Vaccination: Breakthrough Infections, <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/effectiveness/why-measure-effectiveness/breakthrough-cases.html> (stating, in part, that “COVID-19 vaccines are effective at preventing infection, serious illness, and death. Most people who get COVID-19 are unvaccinated. However, since vaccines are not 100% effective at preventing infection, some people who are fully vaccinated will still get COVID-19 . . . People who get vaccine breakthrough infections can be contagious”) (updated August 23, 2021).

<sup>12</sup> For example, President Joe Biden on July 29, 2021, announced several measures to increase the number of people vaccinated against COVID-19 and to slow the spread of the Delta variant, including strengthening safety protocols for federal

<sup>124</sup> 17 CFR 200.30-3(a)(12), (57) and (58).

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

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

<sup>3</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>4</sup> A “branch office” is any location where one or more associated persons of a Member regularly conduct the business of effecting any transactions in, or inducing or attempting to induce the purchase or sale of any security, or is held out as such, with such exclusions pursuant to Exchange Rule 1306(c)(1)-(7). See Exchange Rule 1306(c).

<sup>5</sup> The Exchange notes that notwithstanding the exclusions in subparagraphs (c)(1)-(7) of Exchange Rule 1306, any location that is responsible for supervising the activities of persons associated with a Member at one or more non-branch locations of such Member is considered to be a branch office. See Exchange Rule 1306(d).

<sup>6</sup> A Member may demonstrate to the satisfaction of the Exchange that because of proximity, special reporting or supervisory practice, other arrangements may satisfy Exchange Rule 1308(d)’s requirements for a particular branch office, or that, based upon the written policies and procedures of such Member providing for a systematic risk-based

The Exchange understands that Members have delayed their return-to-office plans due to the continued pandemic and are considering implementing or have implemented hybrid work arrangements dependent on functions and regulatory requirements.<sup>13</sup> To that end, in order to address ongoing industry-wide concerns regarding having to conduct in-person office inspections while safety concerns related to the pandemic persist and to align with pandemic-related regulatory relief provided by FINRA, which recently extended their substantively identical temporary remote inspection rules,<sup>14</sup> the Exchange proposes to extend Exchange Rule 1308(d)(5) to cover calendar year 2022 inspection obligations through December 31, 2022. The proposed extension would provide clarity to Members on regulatory requirements and account for the time needed for many Members to carefully assess when and how to have their employees safely return to their offices in light of vaccination coverage in the U.S. and transmission levels of the virus, including any emergent variants throughout the country.

By extending Exchange Rule 1308(d)(5) through December 31, 2022, the Exchange does not propose to amend the other conditions of the temporary rule. The proposed amendment to Exchange Rule 1308(d)(5) simply provides that for calendar year 2022, a Member has the option to conduct those inspections remotely through December 31, 2022. The current conditions of Exchange Rule 1308(d)(5) for Members that elect to conduct remote inspections would remain unchanged. Such Members must amend or supplement their written supervisory procedures for remote inspections, use remote inspections as part of an

effective supervisory system, and maintain the required documentation. The additional period of time would also enable the Exchange to further monitor the effectiveness of remote inspections and their impacts—positive or negative—on Members' overall supervisory systems in the evolving workplace. Notwithstanding the proposed temporary rule change, a Member remains subject to the other requirements of Exchange Rule 1308(d).

The Exchange continues to believe this temporary remote inspection option is a reasonable alternative to provide to Members to fulfill their Exchange Rule 1308(d) obligations during the pandemic and is designed to achieve the investor protection objectives of the inspection requirements under these unique circumstances. Members should consider whether, under their particular operating conditions, reliance on remote inspections would be reasonable under the circumstances. For example, Members with offices that are open to the public or that are otherwise doing business as usual should consider whether some form of in-person inspections would be feasible and appropriately contribute to a supervisory system that is reasonably designed to achieve compliance with applicable securities laws and regulations as well as with applicable Exchange Rules.

The Exchange notes that the proposed rule change is substantively identical to the proposed rule changes recently filed by FINRA.<sup>15</sup> The Exchange notes that MIAAX Chapter XIII is incorporated by reference into the rulebooks of the Exchange's affiliates, MIAAX PEARL, LLC ("Pearl") and MIAAX Emerald, LLC ("Emerald"). As such, the amendments to MIAAX Chapter XIII proposed herein will also apply to MIAAX Pearl and MIAAX Emerald Chapters XIII.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>16</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>17</sup> requirements that the rules of an exchange be 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 mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>18</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that, in light of the impact of COVID-19 on the performance of on-site office and location inspections pursuant to Exchange Rule 1308(d), the proposed temporary rule change is intended to provide Members a temporary regulatory option to conduct inspections of offices and locations remotely during the calendar year 2022. The proposed temporary rule change does not relieve Members from meeting their existing core regulatory obligations to establish and maintain a system to supervise the activities of each associate person that is reasonably designed to achieve compliance with applicable securities laws and regulations as well as with applicable Exchange Rules that directly serve investor protection. In a time when faced with ongoing challenges resulting from the COVID-19 pandemic, the Exchange believes that the proposed temporary rule change provides sensibly tailored relief that will afford Members the ability to assess when and how to implement their work re-entry plans as measured against the health and safety of their personnel, while continuing to serve and promote the protection of investors and the public interest.

## 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 Exchange does not believe the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed extension of the temporary remote inspection relief rule will apply equally to all Members required to conduct office and location inspections in calendar year 2022 through December 31, 2022. The Exchange further does not believe that the proposed extension to the temporary rule will impose any burden on intermarket competition because it relates only to the extension

government employees and contractors. See <https://www.whitehouse.gov/briefing-room/statements-releases/2021/07/29/factsheet-president-biden-to-announce-new-actions-to-get-more-americans-vaccinated-and-slow-the-spread-of-the-delta-variant>. More recently, President Joe Biden on August 31, 2021, briefed the press on, among other things, the government's response to the COVID-19 surge, noting the government's continuing efforts to help states with Delta variant outbreaks. See <https://www.whitehouse.gov/briefing-room/press-briefings/2021/08/31/press-briefing-by-white-house-covid-19-response-team-and-public-health-officials-53/>.

<sup>13</sup> The Exchange notes that a majority of its Members are FINRA member firms as well, and that through FINRA's ongoing monitoring, the Exchange has learned that many of its Members have delayed plans to require a full return to the office and that most continue to operate in a remote or hybrid environment.

<sup>14</sup> See Securities and Exchange Act Release Nos. 93002 (September 15, 2021), 86 FR 52508 (September 21, 2021) (SR-FINRA-2021-023); and 94018 (January 20, 2022), 87 FR 4072 (January 26, 2022) (SR-FINRA-2022-001).

<sup>15</sup> *Id.*

<sup>16</sup> 15 U.S.C. 78f(b).

<sup>17</sup> 15 U.S.C. 78f(b)(5).

<sup>18</sup> *Id.*

of the remote manner in which inspections for the calendar year 2022 may be conducted. Additionally, and as stated above, FINRA has recently submitted a filing to extend its substantively identical temporary remote relief rule for its trading permit holders and members in the same manner.<sup>19</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**

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>20</sup> and Rule 19b-4(f)(6)<sup>21</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-MIAX-2022-09 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-MIAX-2022-09. 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-MIAX-2022-09 and should be submitted on or before March 15, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>22</sup>

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

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-94263; File No. SR-EMERALD-2022-06]

**Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing of a Proposed Rule Change To Establish Fees for the Exchange's cToM Market Data Product; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change**

February 15, 2022.

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 February 7, 2022, MIAX Emerald, LLC ("MIAX Emerald" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Item II below, which Item has been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>3</sup> and Rule 19b-4(f)(2) thereunder.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is, pursuant to Section 19(b)(3)(C) of the Act, hereby: (i) Temporarily suspending the proposed rule change; and (ii) instituting proceedings to determine whether to approve or disapprove the proposed rule change.

**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 Exchange's Fee Schedule ("Fee Schedule") to establish fees for the market data product known as MIAX Emerald Complex Top of Market ("cToM"). The fees became operative on February 7, 2022. 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 Description of 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

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

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

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

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

<sup>19</sup> See *supra* note 14.

<sup>20</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>21</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>22</sup> 17 CFR 200.30-3(a)(12).