FOR FURTHER INFORMATION CONTACT: Melissa Rifkin (*rifkin.melissa@pbgc.gov*), Attorney, Regulatory Affairs Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 445 12th Street SW, Washington, DC 20024–2101, 202–229–6563. If you are deaf or hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION: Section 4010 of the Employee Retirement Income Security Act of 1974 (ERISA) and PBGC's regulation on Annual Financial and Actuarial Information Reporting (29 CFR part 4010) require each member of a controlled group to submit financial and actuarial information to PBGC under certain circumstances. Section 4010 specifies that each controlled group member must provide PBGC with certain financial information, including audited (if available) or (if not) unaudited financial statements. Section 4010 also specifies that the controlled group must provide PBGC with certain actuarial information necessary to determine the liabilities and assets for all PBGC-covered plans.

PBGC's 4010 regulation specifies the items of identifying, financial, and actuarial information that filers must submit under section 4010, through PBGC's e-filing portal. Computer-assisted analysis of this information helps PBGC to anticipate possible major demands on the pension insurance system and to focus PBGC resources on situations that pose the greatest risks to that system. Because other sources of information are usually not as current as the section 4010 information and do not reflect a plan's termination liability, the section 4010 filing plays a major role in PBGC's ability to protect participant and premium-payer interests.

The collection of information has been approved under OMB control number 1212–0049 (expires March 31, 2023). On November 7, 2022, PBGC published in the **Federal Register** a notice at 87 FR 67078 informing the public of its intent to request an extension of this collection of information and solicited public comment. No comments were received. PBGC intends to request that OMB extend its approval, without modifications, for another 3 years. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

PBGC estimates that 400 controlled groups will submit filings under part 4010 each year. The total estimated annual hourly and cost burdens of the information collection are 800 hours and $11,080,000.

Issued in Washington, DC, by

Stephanie Cibinic,

Deputy Assistant General Counsel for Regulatory Affairs, Pension Benefit Guaranty Corporation.

[FR Doc. 2023–00691 Filed 1–13–23; 8:45 am]

BILLING CODE 7709–02–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96623; File No. SR–CBOE–2022–062]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Amend Rule 5.24

January 10, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 27, 2022, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend Rule 5.24(e).

(additions are *italicized;* deletions are [bracketed])

* * * * *

Rules of Cboe Exchange, Inc.

* * * * *

Rule 5.24. Disaster Recovery

(a)–(d) No change.

(e) *Loss of Trading Floor or Trading Pit.* If the Exchange trading floor *or a trading pit(s)* becomes inoperable and the Exchange does not make a virtual trading floor available in [a]*the impacted* class*(es)* pursuant to subparagraph (3) below, the Exchange will continue to operate *with respect to the impacted class(es)* in a screen-based only environment using a floorless configuration of the System that is operational while the trading floor *or trading pit(s)* facility is inoperable. The Exchange will operate using this configuration only until the Exchange's trading floor *or trading pit(s)* facility is operational. Open outcry trading *in the impacted classes* will not be available in the event the trading floor *or trading pit(s)* becomes inoperable, except as otherwise set forth in this paragraph (e) below and pursuant to Rule 5.26, as applicable.

(1) *Applicable Rules.* In the event that the trading floor *or a trading pit(s)* becomes inoperable, trading *in the impacted class(es)* will be conducted pursuant to all applicable System Rules, except that open outcry Rules will not be in force *for the impacted class(es),* including but not limited to the Rules (or applicable portions of the Rules) in Chapter 5, Section G, and as follows [(subparagraphs (A) through (C) will be effective until June 20, 2021)]:

(A) notwithstanding the introductory paragraphs of Rules 5.37 and 5.73, an order for the account of a Market-Maker with an appointment in the applicable class on the Exchange may be solicited for the Initiating Order submitted for execution against an Agency Order in any exclusively listed index option class into a simple AIM Auction pursuant to Rule 5.37 or a simple FLEX AIM Auction pursuant to Rule 5.73; *and*

[(B) with respect to complex orders in any exclusively listed index option class:

(1) notwithstanding Rule 5.4(b), the minimum increment for bids and offers on complex orders with any ratio equal to or greater than one-to-twenty-five (0.04) and equal to or less than twenty-five-to-one (25.00) is $0.01 or greater, which may be determined by the Exchange on a class-by-class basis, and the legs may be executed in $0.01 increments; and

(2) notwithstanding the definition of ''complex order'' in Rule 1.1, for purposes of Rule 5.33, the term ''complex order'' means a complex order with any ratio equal to or greater than one-to-twenty-five (0.04) and equal to or less than twenty-five-to-one (25.00); and]

([C]*B*) the contract volume a Market-Maker trades electronically *in an impacted class(es)* during a time period in which the Exchange operates *with respect to that class(es)* in a screen-based only environment will be excluded from determination of whether a Market-Maker executes more than 20% of its contract volume electronically in an appointed class during any calendar quarter, and thus is subject to the continuous electronic quoting obligation, as set forth in Rule 5.52(d).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

All non-trading rules of the Exchange will continue to apply.

* * * * *

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, 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 Rule 5.24(e). Rule 5.24 describes which Trading Permit Holders (''TPHs'') are required to connect to the Exchange's backup systems as well as certain actions the Exchange may take as part of its business continuity plans so that it may maintain fair and orderly markets if unusual circumstances occurred that could impact the Exchange's ability to conduct business. This includes what actions the Exchange would take if its trading floor became inoperable. Specifically, Rule 5.24(e) states if the Exchange trading floor becomes inoperable, the Exchange will continue to operate in a screen-based only environment using a floorless configuration of the System that is operational while the trading floor facility is inoperable. The Exchange would operate using that configuration only until the Exchange's trading floor facility became operational. Open outcry trading would not be available in the event the trading floor becomes inoperable.[3] Rule 5.24(e)(1) also currently states in the event that the trading floor becomes inoperable, trading will be conducted pursuant to all applicable System Rules, except that open outcry Rules would not be in force, including but not limited to the Rules (or applicable portions) in Chapter 5, Section G,[4] and that all non-trading rules of the Exchange would continue to apply, except as set forth in Rule 5.24(e)(1)(A) through (C).

The Exchange proposes several changes to Rule 5.24(e). First, the Exchange amends paragraph (e) in various places to that it will apply if the trading floor or a specific trading pit(s) becomes inoperable. It is possible that only one or more trading pits may be inoperable while other trading pits are unimpacted (and thus operable). Permitting the Exchange to operate in a screen-based only environment with a floorless configuration with respect to only classes impacted by an event that causes only part of the trading floor to become inoperable will minimize the impact to the Exchange's market and trading participants. Amending Rule 5.24(e) apply on a class basis is consistent with the current Rule—for example, Rule 5.24(e) would apply if the Exchange does not make a virtual trading floor available in a class pursuant to Rule 5.24(e)(3).

Second, the proposed rule change deletes Rule 5.24(e)(1)(B). Subparagraph (1)(B) permitted, when the trading floor was inoperable, in exclusively listed index classes, complex orders with any ratio equal to or greater than one-to-twenty-five and equal to or less than twenty-five-to-one to be submitted for electronic execution and permitted the minimum increment for bids and offers on those complex orders to be $0.01 and the legs of those complex orders to be executed in $0.01 increments.[5] Currently, however, the Exchange permits electronic execution of complex orders of any ratio and their legs in penny increments. Therefore, the temporary rule for when the trading floor is inoperable in current subparagraph (1)(B) is moot and no longer necessary.[6]

Third, the proposed rule change deletes the parenthetical in Rule 5.24(e)(1). Pursuant to that parenthetical, the rule exceptions set forth in the subparagraphs of that Rule that would apply when the trading floor was inoperable would be effective only until June 20, 2021. This timeframe was tied to the Exchange's closing of its trading floor in 2020 in response to the COVID–19 pandemic.[7] However, the Exchange believes it is appropriate to permit these temporary rules to apply at any time the trading floor (or a trading pit) is inoperable to allow it to maintain fair and orderly markets and facilitate trading in as continuous manner as possible in the event extraordinary circumstances cause the trading floor to become inoperable. These two rule exceptions would apply only during times when the Exchange's trading floor, or a trading pit(s) as proposed, is inoperable and apply only to impacted classes (and subparagraph (e)(1)(A) would continue apply only to exclusively listed classes). The current Rules would continue to apply when normal conditions exist, and the Exchange offers both electronic and open outcry trading. All non-trading rules of the Exchange, including business conduct rules, would continue to apply.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[8] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[9] 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)[10] requirement that the rules of an exchange not be designed

[3] Pursuant to Rule 5.26, the Exchange may enter into a back-up trading arrangement with another exchange, which could allow the Exchange to use the facilities of a back-up exchange to conduct trading of certain of its products. The Exchange currently has no back-up trading arrangement in place with another exchange.

[4] Chapter 5, Section G of the Exchange's rulebook sets forth the rules and procedures for manual order handling and open outcry trading on the Exchange.

[5] *See* Rules 1.1(definition of complex order), 5.4(b), and 5.33(f)(1). The Exchange notes complex orders with ratios greater than three-to-one or less than one-to-three, whether submitted for execution electronically or in open outcry, are subject to separate priority requirements. These priority requirements would continue to apply in any class that operates in a screen-based only environment if its applicable trading pit is inoperable. *See* Rule 5.33(f)(2).

[6] The proposed rule change also amends current Rule 5.24(e)(1)(C) to become subparagraph (B) in light of the deletion of current subparagraph (B).

[7] *See* Securities Exchange Act Release No. 88386 (March 13, 2020), 85 FR 15823 (March 19, 2020).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] *Id.*

to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes the proposed rule change to permit the Exchange to operate in a screen-based only environment in a floorless configuration with respect to impacted classes if only part of the Exchange's trading floor is inoperable will 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. Specifically, if only part of the Exchange's trading floor is inoperable due to extraordinary circumstances, the Exchange believes it will allow continued execution opportunities for impacted classes while permitted unimpacted classes to trade in an uninterrupted manner.

The Exchange believes the removal of the temporary rule related to complex orders will protect the investors and the public interest, as the need for this temporary is moot and no longer necessary in the rules, as the Exchange currently permits complex orders with any ratio to be submitted for electronic execution in penny increments. Therefore, deletion of this provision from the Rules will reduce potential confusion for investors.

Finally, the Exchange believes the proposed rule change to permit the temporary rules set forth in proposed Rule 5.24(e)(1)(A) and (B) to be effective any time the Exchange's trading floor or a trading pit(s) (as proposed) is inoperable 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, because these Rules minimize any impact on liquidity that may otherwise occur when the trading floor (or a trading pit) is in operable. As set forth when adopted,[11] with respect to the provision to permit appointed Market-Makers to be solicited to trade against an Agency Order submitted into a simple AIM Auction (both for FLEX and non-FLEX Options in exclusively listed index option classes), the majority of liquidity provided to orders executed as part of an open outcry cross is provided by appointed Market-Makers. If this liquidity was not available to TPHs in an all-electronic environment, there would be significant risk that these orders may not receive full execution in a timely manner (or at all) and may trade at worse prices than would have otherwise been available on the trading floor. The Exchange believes this provision minimizes this risk and provide electronic execution and price improvement opportunities for these orders, similar to the opportunities that are generally available to them on the trading floor, which protects customers seeking execution of these orders. As set forth in the Rules, all TPHs may submit responses to AIM Auctions, all Agency Orders will continue to have an opportunity for price improvement, and priority customer orders will continue to have priority at each price level.

Additionally, the Exchange believes the provision to exclude volume executed during a time when the trading floor is inoperable from the determination of whether a Market-Maker is subject to continuous electronic quoting obligations promotes just and equitable principles of trade. If this volume were included in this determination, a Market-Maker not otherwise subject to these obligations may become subject to them for reasons outside of the Market-Maker's control. As a result, a Market-Maker may become subject to additional obligations that would not apply during normal circumstances. This provision has no impact on Market-Makers currently subject to continuous electronic quoting obligations, as once a Market-Maker becomes subject to that obligation, it remains subject to that obligation, even if it executes less than 20% of its contract volume electronically in a subsequent calendar quarter. This provision is solely intended to impact those Market-Makers who currently are not subject to continuous electronic quoting obligations. Without this provision, depending on the length of time the trading floor is inoperable, a Market-Maker that has not previously exceeded the 20% contract volume threshold and thus is not currently subject to continuous electronic quoting obligation could exceed that threshold for a calendar quarter, which would then subject it to a new obligation that was not in place when the trading floor was operable. The Exchange believes it would be unduly burdensome to impose obligations on a Market-Maker that are inconsistent with the Market-Maker's standard business practices as a result of extraordinary circumstances outside of the Market-Maker's control, particularly when the Exchange expects those circumstances to be temporary. The Exchange notes all Market-Makers must comply with the other obligations set forth in Rules 5.51 and 5.52, including the obligations related to size, two-sided quotes, and competitive quotes.

The Exchange believes the presence of these temporary rules were beneficial to liquidity and thus to investors during the three-month closure of the Exchange's trading floor in 2020 and observed no harm to investors as a result of these temporary rules. The Exchange believes it is appropriate for these two temporary rules to apply any time the trading floor or a trading pit is inoperable so that it may maintain fair and orderly markets with sufficient liquidity for investors in the event any extraordinary circumstances cause the Exchange to close its trading floor (or any part thereof).

The Exchange's Regulatory Division will continue its standard routine surveillance reviews for electronic trading as it does today and has put together a regulatory plan to surveil the additional changes being proposed when any class is operating in a screen-based only environment.

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 not intended as a competitive filing, but rather is proposed as part of its business continuity plans intended to allow it to maintain fair and orderly markets if unusual circumstances cause the Exchange's trading floor or a trading pit(s) to become inoperable. The Exchange believes the proposed rule change will not burden intramarket competition, as any closure of the trading floor (or trading pit) and resulting operation in a screen-based only environment in a floorless configuration for any class will apply in the same manner to all market participants, as all market participants would be able to submit orders for electronic execution only in impacted classes. Additionally, the Exchange believe the proposed rule change will not burden intermarket competition, as it applies solely to the operation of the Exchange's trading floor. Other than the two temporary rules (one of which applies only to exclusively listed classes), any trading in any class in a screen-based only environment would occur in the same manner as it does today. Permitting the Exchange to operate in a floorless configuration with respect to only impacted classes rather than the entire floor (and all classes) if some classes may continue to operate in hybrid environment will permit the Exchange to operate its market with as minimal interruption as possible in the event extraordinary circumstances cause only part of its trading floor to be inoperable.

[11] *See* Securities Exchange Act Release No. 88386 (March 13, 2020), 85 FR 15823 (March 19, 2020).

The Exchange does not believe the proposed rule change to permit the temporary provision related to AIM contra-parties to apply any time the Exchange's trading floor (or trading pit) is inoperable will impose any burden on intramarket competition, as it will permit all market participants to be solicited to participate in AIM transactions in exclusively listed index options. Additionally, the Exchange does not believe this proposed rule change will impose any burden on intermarket competition, as this provision would apply only to an exclusively listed index option(s) impacted by the trading floor or trading pit closure, which are available for trading solely on the Exchange. By limiting this provision to exclusively listed index options, the Exchange believes this will permit competition with other options exchange with respect to multi-listed options to continue in the same manner as it occurs during normal trading circumstances. The Exchange believes the proposed rule change is necessary and appropriate to allow it to provide trading in these products (which are only able to trade on the Exchange) in an uninterrupted manner to the extent practicable under any extraordinary circumstances (not just the ongoing pandemic).

The Exchange does not believe the proposed rule change to permit the temporary provision to exclude contract volume executed during a time when the trading floor is inoperable from the determination of whether a Market-Maker is subject to continuous quoting obligations at any time will not burden intramarket competition, as it will apply in the same manner to all Market-Makers. As noted above, this provision will have no impact on Market-Makers currently subject to continuous electronic quoting obligations, as those will continue to apply. This provision will prevent Market-Makers not currently subject to continuous electronic quoting obligations who could exceed the 20% threshold triggering those obligations solely because the trading floor was inoperable. The Exchange believes it would be unduly burdensome to subject a Market-Maker to additional obligations because of the unavailability of the Exchange facility where that Market-Maker conducts the vast majority of its business under normal trading circumstances. The Exchange believes this proposed rule change will not burden intermarket competition, as it applies solely to continuous electronic quoting obligations applicable to Market-Makers of the Exchange.

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

The Exchange neither solicited nor received comments on the proposed rule change.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [12] and subparagraph (f)(6) of Rule 19b–4 thereunder.[13]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [14] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [15] 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 so that the proposal may become operative immediately upon filing. The Exchange represents that one of its trading pits on the Exchange's trading floor recently experienced weather-related water damage, causing the Exchange to operate in a screen-based only environment with a floorless configuration in one class. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Exchange represents that waiver of the operative delay would permit the Exchange to operate in an uninterrupted manner as much as practicable if any extraordinary circumstance causes a part of the trading floor to become inoperable. The Commission notes that the Exchange represents that the Exchange operated all classes in a floorless configuration for approximately three months in 2020, with temporary rules applying to all classes as applicable and observed no negative impact on the market or market participants. Accordingly, the Commission hereby waives the operative delay and designates the proposal operative upon filing.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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.* Please include File Number SR–CBOE–2022–062 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–CBOE-*2022–062.* 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

[12] 15 U.S.C. 78s(b)(3)(A)(iii).

[13] 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 Commission has waived the five-day prefiling requirement in this case.

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] 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).

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–CBOE–2022–062 and should be submitted on or before February 7, 2023.

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

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–00655 Filed 1–13–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96628; File No. SR–EMERALD–2023–01]

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by MIAX Emerald, LLC To Amend the Fee Schedule To Modify Certain Connectivity and Port Fees

January 10, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 9, 2023, 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'') to amend its Fee Schedule (the ''Fee Schedule'') to amend certain connectivity and port fees.

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 the Fee Schedule as follows: (1) increase the fees for a 10 gigabit (''Gb'') ultra-low latency (''ULL'') fiber connection for Members[3] and non-Members; and (2) adopt a tiered-pricing structure for Limited Service MIAX Emerald Express Interface (''MEI'') Ports[4] available to Market Makers.[5] The Exchange last increased the fees for both 10Gb ULL fiber connections and Limited Service MEI Ports beginning with a series of filings on October 1, 2020 (with the final filing made on March 24, 2021).[6] Prior to that fee change, the Exchange provided Limited Service MEI Ports for $50 per port, after the first two Limited Service MEI Ports that are provided free of charge, and the Exchange incurred all the costs associated to provide those first two Limited Service MEI Ports since it commenced operations in March 2019. The Exchange then increased the fee by $50 to a modest $100 fee per Limited Service MEI Port and increased the fee for 10Gb ULL fiber connections from $6,000 to $10,000 per month.

Also, in that fee change, the Exchange adopted fees for providing five different types of ports for the first time. These ports were FIX Ports, MEI Ports, Clearing Trade Drop Ports, FIX Drop Copy Ports, and Purge Ports.[7] Again, the Exchange absorbed all costs associated with providing these ports since its launch in March 2019. As explained in that filing, expenditures, as well as research and development (''R&D'') in numerous areas resulted in a material increase in expense to the Exchange and were the primary drivers for that proposed fee change. In that filing, the Exchange allocated a total of $9.3 million in expenses to providing 10Gb ULL fiber connectivity, additional Limited Service MEI Ports, FIX Ports, MEI Ports, Clearing Trade Drop Ports, FIX Drop Copy Ports, and Purge Ports.[8]

Since the time of 2021 increase discussed above, the Exchange experienced ongoing increases in expenses, particularly internal expenses. As discussed more fully below, the Exchange recently calculated increased annual aggregate costs of $11,361,586 for providing 10Gb ULL connectivity and $1,779,066 for providing Limited Service MEI Ports.

Much of the cost relates to monitoring and analysis of data and performance of the network via the subscriber's connection with nanosecond granularity, and continuous improvements in network performance with the goal of improving the subscriber's experience. The costs associated with maintaining and enhancing a state-of-the-art network is a significant expense for the Exchange, and thus the Exchange believes that it is reasonable and appropriate to help offset those increased costs by amending fees for connectivity services. Subscribers expect the Exchange to provide this level of support so they continue to receive the performance they expect. This differentiates the Exchange from its competitors.

The Exchange now proposes to amend the Fee Schedule to amend the fees for 10Gb ULL connectivity and Limited

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 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.

[4] The MIAX Emerald Express Interface (''MEI'') is a connection to the MIAX Emerald System that enables Market Makers to submit simple and complex electronic quotes to MIAX Emerald. *See* the Definitions Section of the Fee Schedule.

[5] The term ''Market Makers'' refers to Lead Market Makers (''LMMs''), Primary Lead Market Makers (''PLMMs''), and Registered Market Makers (''RMMs'') collectively. *See* the Definitions Section of the Fee Schedule and Exchange Rule 100.

[6] *See* Securities Exchange Act Release Nos. 91460 (April 1, 2021), 86 FR 18349 (April 8, 2021) (SR–EMERALD–2021–11); 90184 (October 14, 2020), 85 FR 66636 (October 20, 2020) (SR–EMERALD–2020–12); 90600 (December 8, 2020), 85 FR 80831 (December 14, 2020) (SR–EMERALD–2020–17); 91032 (February 1, 2021), 86 FR 8428 (February 5, 2021) (SR–EMERALD–2021–02); *and* 91200 (February 24, 2021), 86 FR 12221 (March 2, 2021) (SR–EMERALD–2021–07).

[7] *See id.* for a description of each of these ports.

[8] *Id.*