

Dated: July 28, 2023.

**Sherry R. Haywood,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98018; File No. SR-EMERALD-2023-18]

### Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Provide an Additional Means of Access to the Member Firm Portal Through an Application Programming Interface

July 28, 2023.

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 July 21, 2023, 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 provide an additional means to access its Member Firm Portal (“MFP”).<sup>3</sup>

The text of the proposed rule change is available on the Exchange’s website at <https://www.miaxglobal.com/markets/us-options/emerald-options/rule-filings>, 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 provides Members access to an internet-facing portal which provides self-service functions to Members, known as the MFP. Specifically, the MFP allows Members to correct certain trade information required by the Options Clearing Corporation (“OCC”), such as the trade’s account number, sub-account number, Clearing Member Trade Assignment (“CMTA”), Clearing Participant Give-Up, or account type. The MFP also provides Members the ability to adjust risk settings and allows Market Makers<sup>4</sup> to request options class assignments. Members may also perform the following function via the MFP: selecting symbol assignments; editing existing symbol assignments; unassigning one or more symbol; retrieving symbol assignments; receiving export of symbol assignments for a business day; and retrieving assignment history for a given symbol assignment. The MFP allows Members to more efficiently manage their back office operations and assist them in providing accurate clearing information to the OCC. Currently, access to the MFP is provided on a per user basis, whereby Members seek to have individuals within their organization permissioned to access the MFP via a web portal on their behalf (known as the “MFP User Interface” or “MFP UI”). The Exchange notes that other options exchanges make similar products available to firms for a monthly per user fee.<sup>5</sup> The Exchange provides the MFP UI to Members free of charge.

Members have requested that the Exchange also provide access to the MFP via an Application Programming Interface<sup>6</sup> (“API” and together “MFP API”), in addition to the current MFP UI

accessed via the web portal. In sum, an API is a way for two or more computer programs to talk to each other. It is a software to software interface that defines the data and the transactions that can be communicated between systems. In providing the MFP API, functions that would otherwise be done manually via the MFP UI, can be automated. The MFP API, in essence, facilitates and expedites the transaction processing for the supported functionality such that the Exchange Members can automate their interactions with the MFP. This allows for more efficient processing, the potential reduction of operational risk due to issues caused by human error, the timeliness of the completion of MFP-related functions, etc.<sup>7</sup> Providing API access to the MFP would allow Members to enable their systems and applications to communicate directly with the MFP, thereby eliminating or reducing the need for individuals to access the MFP UI via the web portal.

The Exchange does not propose to alter the current MFP or MFP UI. The Exchange simply proposes to provide an additional and optional means to access the MFP, in the form of an API, and Members would be able to perform the same functions they do today when they access the MFP UI via the web portal. API access to the MFP would allow a Member’s applications to communicate directly with the MFP. Therefore, by its nature, the MFP API does not lend itself to access on a per user basis, as is the case today with the MFP UI via the web portal. API access would allow Members to automate functions they perform today on the MFP, such as adjusting risk settings or managing options assignments. Members who do not prefer to access the MFP API would be able to perform the same functions when accessing the MFP UI via the current web portal.

The Exchange notes that use of accessing the MFP API would be completely voluntary and would simply be second optional means to access the MFP. Members who wish to continue to access the MFP UI via the web portal may continue to do so for no fee.

##### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b) of the Act,<sup>8</sup> in general, and Section 6(b)(5),<sup>9</sup> in particular, because it is designed to

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

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

<sup>3</sup> See MIAX Exchanges Member Firm Portal User Manual, available at [https://www.miaxglobal.com/sites/default/files/page-files/MIAX\\_Exchanges\\_Member\\_Firm\\_Portal\\_User\\_Manual\\_01032023.pdf](https://www.miaxglobal.com/sites/default/files/page-files/MIAX_Exchanges_Member_Firm_Portal_User_Manual_01032023.pdf).

<sup>4</sup> The term “Market Makers” refers to “Lead Market Makers”, “Primary Lead Market Makers” and “Registered Market Makers” collectively. See Exchange Rule 100.

<sup>5</sup> See BOX Exchange LLC Fee Schedule, Section III. D. The Nasdaq Stock Market LLC (“Nasdaq”) charges \$200 per month, per user. See Nasdaq Rules Options 7 Pricing Schedule, Section 6 Nasdaq Options Maintenance Tool. See also Securities Exchange Act Release No. 96723 (January 20, 2023), 88 FR 5046 (January 26, 2023) (SR-BOX-2023-03) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Establish a New Service and Related Fees for Use of the BOX Options Market LLC (“BOX”) Trade Management System).

<sup>6</sup> The Exchange intends to submit a separate filing with the Commission pursuant to Section 19(b)(1) to propose fees for the Service.

<sup>7</sup> See, e.g., *What is an API?*, available at <https://www.ibm.com/topics/api> (last visited June 22, 2023).

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

<sup>9</sup> 15 U.S.C. 78f(b)(5).

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, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange notes that providing the MFP API to Members is consistent with the Act in that the use of MFP API is completely voluntary and simply provides Members with an additional means to access the Exchange's MFP. The MFP is a useful tool for Members to manage their trading on the Exchange, including back office operations, risk controls settings, and Market Maker options assignments.

As noted above, accessing the MFP via an API would be an optional alternative to web access. Those not electing to access the MFP via an API may continue to use the MFP UI via the web portal free of charge. The MFP, whether accessed via an API or web portal, allow Members to more efficiently manage their back office operations, assist them in providing accurate clearing information to the OCC and in selecting Market Maker options assignments. The Exchange notes that trade information in the MFP is specific to each Member and their trades, allowing them to conveniently verify, update, and/or correct transaction information as needed.

Providing API access to the MFP would be provided purely for convenience, in response to Member demand, and would be entirely optional. As stated above, API access to the MFP would enable Members to connect their applications to the MFP allowing their application to communicate directly with the MFP. This enables Members to automate functions that would normally be performed by individual users access the MFP via the current web portal, such as adjusting risk settings and managing options assignments. Members who do not prefer to access the MFP API would be able to perform the same functions by accessing the MFP UI via the existing web portal.

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. API access to the MFP would simply be an optional additional means to access the MFP.

The Exchange does not believe there would be any competitive advantage for Members who access the MFP via an API over those who access it via the current web portal because Members would be able to perform the same functions via both modes of access. API access would simply be a convenience and would enable Members to automate those functions. The Exchange does not believe a Member's ability to automate this functionality provides any competitive advantage when trading on the Exchange. As such, the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition not necessary or appropriate in furtherance of the purposes of the Act.

### *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 if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6)<sup>11</sup> thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>12</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>13</sup> the Commission may 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 proposed rule change may become operative upon filing. The Exchange requested the waiver because it would allow the Exchange to expand the means of access

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</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, along with a brief description and text of 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>12</sup> 17 CFR 240.19b-4(f)(6).

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

to the MFP sooner and meet the demands of Members who have requested API access to meet their own back office needs. The Exchange stated that Members requested the ability to access the API so that they may automate certain functions and that they would be able to perform the same functions in the MFP regardless of whether they access the MFP via the web portal or an API. For these reasons, and because the proposed rule change does not raise any novel legal or regulatory issues, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.<sup>14</sup>

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 (<https://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-2023-18 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-2023-18. 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

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

post all comments on the Commission's internet website (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-EMERALD-2023-18 and should be submitted on or before August 24, 2023.

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

**Sherry R. Haywood,**  
Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98014; File No. SR-NASDAQ-2023-025]

### Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change To Establish Listing Standards Related To Notification and Disclosure of Reverse Stock Splits

July 28, 2023.

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 July 21, 2023, The Nasdaq Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the 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 proposes to establish listing standards related to notification and disclosure of reverse stock splits.

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules>, at the principal office of the Exchange, 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

Nasdaq has observed that the current market environment has led to an increase in reverse stock split activity. In 2022, Nasdaq processed 196 reverse stock splits, compared to 31 in 2021 and 94 in 2020. As of June 23, 2023, Nasdaq has processed 164 reverse stock splits, and projects significantly more throughout 2023. Reverse stock splits are often effected by smaller companies that do not have broad media or research coverage. In most cases, the companies are listed on the Capital Market tier and are conducting reverse stock splits to achieve compliance with Nasdaq's \$1 bid price requirement.<sup>3</sup>

Nasdaq believes that the increase in companies effecting reverse stock splits warrants amendments to the listing rules to enhance the ability for market participants to accurately process these events, and thereby maintain fair and

orderly markets. As such, Nasdaq is proposing amendments to its rules regarding notification and disclosure of reverse stock splits and regulatory halts.<sup>4</sup> Specifically, Nasdaq is proposing to adopt additional listing rules requiring a company conducting a reverse stock split to notify Nasdaq about certain details of the reverse stock split at least five (5) business days (no later than 12:00 p.m. ET) prior to the anticipated market effective date, and make public disclosure about the reverse stock split at least two (2) business days (no later than 12:00 p.m. ET) prior to the anticipated market effective date.<sup>5</sup>

Currently, a reverse stock split is considered a "Substitution Listing Event" under Listing Rule 5005(a)(44).<sup>6</sup> Listing Rule 5250(e)(4) requires a company to notify Nasdaq about any "Substitution Listing Event (other than a re-incorporation or a change to a Company's place of organization) no later than 15 calendar days prior to the implementation of such event by filing the appropriate form as designated by Nasdaq." Although there is no dedicated requirement for public disclosure of a reverse stock split under Nasdaq's current rules, Listing Rule 5250(b)(1) requires the company to make "prompt disclosure" of "any material information that would reasonably be expected to affect the value of its securities or influence investors' decisions," which includes reverse stock splits. While promptly is not defined, Nasdaq has published an FAQ clarifying that "[t]his disclosure should be disseminated prior to, or in conjunction with, the announcements that Corporate Data Operations will

<sup>4</sup> Nasdaq intends to separately submit a rule filing to adopt a new regulatory halt specific to the pre-market trading and opening of a Nasdaq-listed security undergoing a reverse stock split.

<sup>5</sup> For example, if a company desires to effect a reverse stock split with a market effective date of Monday, July 24, the company would have to provide Nasdaq with a draft of the disclosure required by proposed Rule 5250(b)(4) and a complete Company Event Notification Form by 12:00 p.m. ET on Monday, July 17, and provide the public disclosure by 12:00 p.m. ET by Thursday, July 20. Note that this example presumes that there are no holidays during these dates.

<sup>6</sup> Listing Rule 5505(a)(44) states, in part, that a "Substitution Listing Event" means: a reverse stock split, re-incorporation or a change in the Company's place of organization, the formation of a holding company that replaces a listed Company, reclassification or exchange of a Company's listed shares for another security, the listing of a new class of securities in substitution for a previously-listed class of securities, a business combination described in IM-5101-2, a change in the obligor of a listed debt security, or any technical change whereby the Shareholders of the original Company receive a share-for-share interest in the new Company without any change in their equity position or rights.

<sup>15</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.

<sup>3</sup> Rule 5550(a)(2) specifies that a Company that has its Primary Equity Security listed on the Capital Market must have a minimum bid price of at least \$1 per share. See also Rule 5450(a)(1) (Global and Global Select Markets). Companies are afforded a grace period pursuant to Rule 5810(c)(3)(A) to regain compliance.