

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-85386; File No. SR-EMERALD-2019-04)

March 21, 2019

Self-Regulatory Organizations; MIAX EMERALD, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Exchange Rule 507, Must Give Up Clearing Member, and Rule 513, Submission of Orders and Clearance of Transactions

Pursuant to the provisions of 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 March 11, 2019, MIAX Emerald, LLC (“MIAX Emerald” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a 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 Exchange Rule 507, Must Give Up Clearing Member, and Rule 513, Submission of Orders and Clearance of Transactions, in order to codify the requirement that for each transaction in which a Member³ participates, the Member may indicate the name of any Clearing Member⁴ through which the transaction will be cleared (“Give Up”), and to establish a new “Opt In” process by which a Clearing Member can restrict one or more of its OCC numbers and thereafter designate certain Members as authorized to Give Up a restricted clearing number.

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 term “Clearing Member” means a Member that has been admitted to membership in the Clearing Corporation pursuant to the provisions of the rules of the Clearing Corporation. See Exchange Rule 100.

The text of the proposed rule change is available on the Exchange’s website at <http://www.miaxoptions.com/rule-filings/emerald>, at MIAX Emerald’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 its requirements in MIAX Emerald Rule 507 and Rule 513, related to the give up of a Clearing Member by a Member on Exchange transactions. By way of background, to enter transactions on the Exchange, a Member must either be a Clearing Member or must have a Clearing Member agree to accept financial responsibility for all of its transactions. Additionally, Rule 507 currently provides that when a Member executes a transaction on the Exchange, it must give up the name of a Clearing Member (the “Give Up”) through which the transaction will be cleared (i.e., “give up”). The Exchange believes that this proposal would result in the fair and reasonable use of resources by both the Exchange and the Member. In addition, the proposed change would align the Exchange with competing options exchanges that have proposed rules consistent with this proposal.⁵

⁵ See Securities Exchange Act Release No. 84624 (November 19, 2018), 83 FR 60547 (November 26, 2018)(SR-Phlx-2018-72)(Notice of Filing of Proposed Rule Change to

Recently, certain Clearing Members, in conjunction with the Securities Industry and Financial Markets Association (“SIFMA”), expressed concerns related to the process by which executing brokers on U.S. options exchanges (“Exchanges”) are allowed to designate or ‘give up’ a clearing firm for the purposes of clearing particular transactions. The SIFMA-affiliated Clearing Members have recently identified the current give up process as a significant source of risk for clearing firms, and subsequently requested that the Exchanges alleviate this risk by amending Exchange rules governing the give up process.⁶

Proposed Rule Change

Based on the above, the Exchange now seeks to amend its rules regarding the current give up process in order to allow a Clearing Member to opt in, at The Options Clearing Corporation (“OCC”) clearing number level, to a feature that, if enabled by the Clearing Member, will allow the Clearing Member to specify which Members are authorized to give up that OCC clearing number. As proposed, Rule 507 will be amended to provide that for each transaction in which a Member participates, the Member may indicate the name of any Clearing Member through which the transaction will be cleared (“Give Up”), provided the Clearing Member has not elected to “Opt In”, as defined in paragraph (b) of the proposed Rule, and

Establish Rules Governing the Give Up of a Clearing Member by a Member Organization on Exchange Transactions). See also Securities Exchange Act Release No. 84981 (January 9, 2019), 84 FR 837 (January 31, 2019) (SR-Phlx-2018-72) (Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Establish Rules Governing the Give Up of a Clearing Member by a Member Organization on Exchange Transactions). See also Securities Exchange Act Release No. 85136 (February 14, 2019)(SR-Phlx-2018-72)(Order Approving a Proposed Rule Change to Establish Rules Governing the Give Up of a Clearing Member by a Member Organization on Exchange Transactions).

⁶ See id.

restricted one or more of its OCC number(s) (“Restricted OCC Number”).⁷ A Member may Give Up a Restricted OCC Number provided the Member has written authorization as described in paragraph (b)(2) (“Authorized Member”).

Proposed Rule 507(b) provides that Clearing Members may request the Exchange restrict one or more of their OCC clearing numbers (“Opt In”) as described in subparagraph (b)(1) of Rule 507. If a Clearing Member Opt In, the Exchange will require written authorization from the Clearing Member permitting a Member to Give Up a Clearing Member’s Restricted OCC Number. An Opt In would remain in effect until the Clearing Member terminates the Opt In as described in subparagraph (3). If a Clearing Member does not Opt In, that Clearing Member’s OCC number may be subject to Give Up by any Member.

Proposed Rule 507(b)(1) will set forth the process by which a Clearing Member may Opt In. Specifically, a Clearing Member may Opt In by sending a completed “Clearing Member Restriction Form” listing all Restricted OCC Numbers and Authorized Members.⁸ A copy of the proposed form is attached in Exhibit 3. A Clearing Member may elect to restrict one or more OCC clearing numbers that are registered in its name at OCC. The Clearing Member would be required to submit the Clearing Member Restriction Form to the Exchange’s Membership Department as described on the form. Once submitted, the Exchange requires ninety days before

⁷ Today, electronic trades need a valid mnemonic, which is only set up if there is a clearing arrangement already in place through a Letter of Guarantee. As such, electronic trades automatically clear through the guarantor associated with the mnemonic at the time of the trade, so a Member may only amend its Give Up post-trade. As proposed, the Exchange will also restrict the post-trade allocation portion of an electronic trade systematically. See note 10 below.

⁸ This form will be available on the Exchange’s web site. The Exchange will also maintain, on its web site, a list of the Restricted OCC Numbers, which will be updated on a regular basis, and the Clearing Member’s contact information to assist Members (to the extent they are not already Authorized Members) with requesting authorization for a Restricted OCC Number. The Exchange may utilize additional means to inform its Members of such updates on a periodic basis.

a Restricted OCC Number is effective within the System. This time period is to provide adequate time for the Member users of that Restricted OCC Number who are not initially specified by the Clearing Member as Authorized Members to obtain the required written authorization from the Clearing Member for that Restricted OCC Number. Such Member users would still be able to Give Up that Restricted OCC Number during the ninety day period (i.e., until the number becomes restricted within the System).

Proposed Rule 507(b)(2) will set forth the process for Members to Give Up a Clearing Member's Restricted OCC Number. Specifically, a Member desiring to Give Up a Restricted OCC Number must become an Authorized Member.⁹ The Clearing Member will be required to authorize a Member as described in subparagraph (1) or (3) of Rule 507(b) (i.e., through an Clearing Member Restriction Form), unless the Restricted OCC Number is already subject to a Letter of Guarantee that the Member is a party to, as set forth in Rule 507(d).

Pursuant to proposed Rule 507(b)(3), a Clearing Member may amend the list of its Authorized Members or Restricted OCC Numbers by submitting a new Clearing Member Restriction Form to the Exchange's Membership Department indicating the amendment as described on the form. Once a Restricted OCC Number is effective within the System pursuant to Rule 507(b)(1), the Exchange may permit the Clearing Member to authorize, or remove from authorization for, a Member to Give Up the Restricted OCC Number intra-day only in unusual circumstances, and on the next business day in all regular circumstances. The Exchange will promptly notify the Member if they are no longer authorized to Give Up a Clearing Member's Restricted OCC Number. If a Clearing Member removes a Restricted OCC Number, any

⁹ The Exchange will develop procedures for notifying Members that they are authorized or unauthorized by Clearing Members.

Member may Give Up that OCC clearing number once the removal has become effective on or before the next business day.

Proposed Rule 507(c) will provide that the System will not allow an unauthorized Member to Give Up a Restricted OCC Number. Specifically, the System will not allow an unauthorized Give Up with a Restricted OCC Number to be submitted at the firm mnemonic level at the point of order entry.¹⁰

Furthermore, the Exchange proposes to adopt paragraph (d) to Rule 507 to provide, as is the case today, that a clearing arrangement subject to a Letter of Guarantee would immediately permit the Give Up of a Restricted OCC Number by the Member that is party to the arrangement. Since there is an OCC clearing arrangement already established in this case, no further action is needed on the part of the Clearing Member or the Member.

The Exchange also proposes to adopt paragraph (e) to Rule 507 to provide that an intentional misuse of this Rule is impermissible, and may be treated as a violation of Rule 301, titled “Just and Equitable Principles of Trade.” This language will make clear that the Exchange will regulate an intentional misuse of this Rule (e.g., sending orders to a Clearing Member’s OCC account without the Clearing Member’s consent), and such behavior would be a violation of Exchange rules.

Furthermore, the Exchange proposes to adopt paragraph (f) to Rule 507 to codify that notwithstanding anything to the contrary in the proposed rule, if a Clearing Member that a Member has indicated as the Give Up rejects a trade, the Clearing Member that has issued a

¹⁰ Specifically, the System will block the entry of the order from the outset. This is because a valid mnemonic will be required for any order to be submitted directly to the System, and a mnemonic will only be set up for a Member if there is already a clearing arrangement in place for that firm either through a Letter of Guarantee (as is the case today) or in the case of a Restricted OCC Number, the Member becoming an Authorized Member. The System will also restrict any post-trade allocation changes if the Member is not authorized to use a Restricted OCC Number.

Letter of Guarantee pursuant to Rule 209, for such executing Member, shall be responsible for the clearance of the subject trade.

Finally, the Exchange proposes to amend Rule 513, which addresses the financial responsibility of Exchange options transactions clearing through Clearing Members, to clarify that this Rule will apply to all Clearing Members, regardless of whether or not they elect to Opt In, pursuant to proposed Rule 507. Specifically, the Exchange proposes to add that Rule 513 will apply to all Clearing Members who either (i) have Restricted OCC Numbers with Authorized Members pursuant to Rule 507, or (ii) have non-Restricted OCC Numbers.

2. Statutory Basis

MIAX Emerald believes that its proposed rule change is consistent with Section 6(b) of the Act¹¹ in general, and furthers the objectives of Section 6(b)(5) of the Act¹² in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

Particularly, as discussed above, several clearing firms affiliated with SIFMA have recently expressed concerns relating to the current give up process, which permits Members to identify any Clearing Member as a designated give up for purposes of clearing particular transactions, and have identified the current give up process (i.e., a process that lacks authorization) as a significant source of risk for clearing firms.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

The Exchange believes that the proposed changes to Rule 507 help alleviate this risk by enabling Clearing Members to ‘Opt In’ to restrict one or more of its OCC clearing numbers (i.e., Restricted OCC Numbers), and to specify which Authorized Member may Give Up those Restricted OCC Numbers. As described above, all other Members would be required to receive written authorization from the Clearing Member before they can Give Up that Clearing Member’s Restricted OCC Number. The Exchange believes that this authorization provides proper safeguards and protections for Clearing Members as it provides controls for Clearing Members to restrict access to their OCC clearing numbers, allowing access only to those Authorized Members upon their request. The Exchange also believes that its proposed Clearing Member Restriction Form allows the Exchange to receive in a uniform fashion, written and transparent authorization from Clearing Members, which ensures seamless administration of the Rule.

The Exchange believes that the proposed Opt In process strikes the right balance between the various views and interests across the industry. For example, although the proposed rule would require Members (other than Authorized Members) to seek authorization from Clearing Members in order to have the ability to give them up, each Member will still have the ability to Give Up a Restricted OCC Number that is subject to a Letter of Guarantee without obtaining any further authorization if that Member is party to that arrangement. The Exchange also notes that to the extent that the executing Member has a clearing arrangement with a Clearing Member (i.e., through a Letter of Guarantee), a trade can be assigned to the executing Members guarantor.¹³ Accordingly, the Exchange believes that the proposed rule change is reasonable and continues to provide certainty that a Clearing Member would be responsible for a trade, which

¹³ See Rule 209 (providing that each Member shall provide a letter of guarantee for the Member’s trading activities on the Exchange from a Clearing Member in a form and manner prescribed by the Exchange). See also proposed Rule 507(f).

protects investors and the public interest. Additionally, the Exchange believes that adopting paragraph (e) of Rule 507 will make clear that an intentional misuse of this Rule (e.g., sending orders to a Clearing Member's OCC account without the Clearing Member's consent) will be a violation of the Exchange's rules, and that such behavior would subject a Member to disciplinary action. For these reasons, the Exchange believes that its proposed changes to Rule 507 and Rule 513, is consistent with Section 6(b) of the Act in general, and furthers the objectives of Section 6(b)(5) of the Act in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest, by codifying the requirement that for each transaction in a which a Member participates, the Member may indicate the name of any Clearing Member through which the transaction will be cleared, provided the Clearing Member has not elected to Opt In.

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 that the proposed rule change will impose an unnecessary burden on intra-market competition because it will apply equally to all similarly situated Members. The Exchange also notes that, should the proposed changes make MIAX Emerald more attractive for trading, market participants trading on other exchanges can always elect to become Members on MIAX Emerald to take advantage of the trading opportunities.

Furthermore, the proposed rule change does not address any competitive issues and ultimately, the target of the Exchange's proposal is to reduce risk for Clearing Members under

the current give up model. Clearing firms make financial decisions based on risk and reward, and while it is generally in their beneficial interest to clear transactions for market participants in order to generate profit, it is the Exchange's understanding from SIFMA and clearing firms that the current process can create significant risk when the clearing firm can be given up on any market participant's transaction, even where there is no prior customer relationship or authorization for that designated transaction.

In the absence of a mechanism that governs a market participant's use of a Clearing Member's services, the Exchange's proposal may indirectly facilitate the ability of a Clearing Member to manage their existing relationships while continuing to allow market participant choice in broker execution services. While Clearing Members may compete with executing brokers for order flow, the Exchange does not believe this proposal imposes an undue burden on competition. Rather, the Exchange believes that the proposed rule change balances the need for Clearing Members to manage risks and allows them to address outlier behavior from executing brokers while still allowing freedom of choice to select an executing broker.

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 Act¹⁴ and Rule 19b-4(f)(6)¹⁵ thereunder.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of the filing. However, Rule 19b-4(f)(6)(iii)¹⁶ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. In its filing, MIAX Emerald requested that the Commission waive the 30-day operative delay. The Exchange represented that the proposal establishes a rule regarding the give up of a Clearing Member in order to help clearing firms manage risk while continuing to allow market participants choice in broker execution services. The Commission notes that it recently approved a substantially similar proposed rule change by Nasdaq Phlx LLC.¹⁷ The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest, as such waiver will provide transparency and operational certainty including through the use of a standardized give up process and would align the give up process with other option exchanges. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.¹⁸

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 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.

¹⁶ 17 CFR 240.19b-4(f)(6)(iii).

¹⁷ See supra note 5.

¹⁸ 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).

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 e-mail [to rule-comments@sec.gov](mailto:to-rule-comments@sec.gov). Please include File Number SR-EMERALD-2019-04 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-2019-04. This file number should be included on the subject line if e-mail 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-2019-04 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Eduardo A. Aleman
Deputy Secretary

¹⁹ 17 CFR 200.30-3(a)(12).