

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-85909; File No. SR-EMERALD-2019-21)

May 21, 2019

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

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 May 8, 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, 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”).

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 adopt Section 1)a)vi to the Fee Schedule to adopt a stock handling fee for stock-option orders (including stock-option eQuotes³) executed against other stock-option orders in the complex order book, which the Exchange must route to an outside venue.

The Exchange originally adopted Exchange Rule 518, Complex Orders, to implement trading on the Exchange in complex orders in an identical fashion, and with an identical rule, as the Exchange’s affiliate, Miami International Securities Exchange, LLC (“MIAX”).⁴ MIAX Emerald Rules, in their current form, were filed as Exhibit B to its Form 1 on August 16, 2018. At that time, stock-option orders as described in MIAX Rule 518 were being implemented on MIAX and MIAX Rule 518 was undergoing revisions to support the implementation and trading of stock-option orders, therefore the revised MIAX Rule 518⁵ was not included in MIAX Emerald’s Form 1 filing. In connection with the implementation by MIAX of stock-option orders, MIAX also adopted a stock handling fee for stock-option orders (including stock-option eQuotes) executed against other stock-option orders in the complex order book, which MIAX must route

³ An eQuote is a quote with a specific time in force that does not automatically cancel and replace a previous Standard quote or eQuote. An eQuote can be cancelled by the Market Maker at any time, or can be replaced by another eQuote that contains specific instructions to cancel an existing eQuote. See Exchange Rule 517(a)(2).

⁴ See Exchange Rule 518.

⁵ See Securities Exchange Act Release No. 83726 (July 27, 2018), 83 FR 37849 (August 2, 2018) (SR-MIAX-2018-16).

to an outside venue.⁶ MIAX Emerald recently amended Exchange Rule 518, Complex Orders, to update its rule text regarding the handling of stock-option orders, in connection with the upcoming launch of such orders on the Exchange.⁷

The Exchange proposes to adopt a stock handling fee of \$0.0010 per share for the stock leg of stock-option orders executed against other stock-option orders in the complex order book, which are routed to an outside venue. This stock handling fee to be assessed by the Exchange will cover all fees charged by the outside venue that prints the trade, and it is also intended to compensate the Exchange for matching these stock-option orders against other stock-option orders on the complex order book. A maximum of \$50 per order, per day, per Member, will be assessed under this fee. The cap is intended to give market participants assurance that they will not pay more than the capped amount for the execution of the stock leg of their stock-option orders. The Exchange believes that by limiting this fee to a maximum of \$50 per order, per day, the Exchange addresses the possibility that a Good ‘Til Cancelled (“GTC”)⁸ order could be executed over multiple days. For example, if such an order was partially-executed on a Monday, and then the remainder was fully-executed on a Tuesday, the total maximum fee charged to the market participant would be \$100 (\$50 per day). In addition to the Exchange’s fee, the Exchange will also pass through to the Member any fees assessed by the routing broker-dealer utilized by the Exchange with respect to the execution of the stock leg of any such order (with such fees to be passed through at cost). For example, the Exchange anticipates that the routing

⁶ See Securities Exchange Act Release No. 83788 (August 7, 2018), 83 FR 40110 (August 13, 2018) (SR-MIAX-2018-18).

⁷ See Securities Exchange Act Release No. 85345 (March 18, 2019), 84 FR 10848 (March 22, 2019) (SR-EMERALD-2019-13).

⁸ A Good ‘til Cancelled or “GTC” Order is an order to buy or sell which remains in effect until it is either executed, cancelled or the underlying option expires. See Exchange Rule 516(l).

broker-dealer will bill the Exchange for Section 31 fees and FINRA Trading Activity Fees with respect to the execution of the stock leg of any such order. The Exchange will pass such fees through to the Member, at cost (that is, without any additional mark-up).

The proposed stock-option handling fee is similar to the stock handling fee charged by the Exchange's affiliate, MIAX.⁹

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act¹⁰ in general, and furthers the objectives of Section 6(b)(4) of the Act¹¹ in particular, in that it is an equitable allocation of reasonable fees and other charges among its members and issuers and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes that the proposed stock handling fee for stock-option orders (including stock-option eQuotes) is consistent with Section 6(b)(4) of the Act in that it is reasonable, equitable and not unfairly discriminatory. The Exchange believes the proposed stock handling fee for stock-option orders is reasonable and equitable as the proposed fee will cover the costs of developing and maintaining the systems that allow for the matching and processing of the stock legs of stock-option orders executed in the complex order book, as well as all fees

⁹ See supra note 6.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(4) and (5).

charged by the outside venue that prints the trade. The Exchange also believes it is reasonable and equitable to pass through to the Member any fees assessed by the routing broker-dealer utilized by the Exchange with respect to the execution of the stock leg of any such order (with such fees to be passed through at cost). The Exchange notes that the Exchange's affiliate, MIAX,¹² and Nasdaq ISE, LLC ("ISE") have comparable fees for the handling of the stock leg of stock-option orders. ISE also charges a stock handling fee of \$0.0010 per share which is capped at \$50 per order.¹³ The Exchange also believes that its proposal is consistent with Section 6(b)(5) of the Act¹⁴ because it will be uniformly applied to all Members that execute stock-option orders in the complex order book on the Exchange.

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

MIAX Emerald does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed fee is similar to and within the range of fees charged by the Exchange's affiliate, MIAX¹⁵, and the Exchange's competitor, ISE.¹⁶ The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange. For the reasons stated above, the Exchange believes that the proposed rule change reflects this competitive environment.

¹² See supra note 6.

¹³ See Nasdaq ISE Pricing Schedule, Options 7, Section 4, Complex Order Fees and Rebates, 12; see also Securities Exchange Act Release No. 74117 (January 22, 2015), 80 FR 4600 (January 28, 2015) (SR-ISE-2015-03).

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ See supra note 6.

¹⁶ See supra note 13.

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

Written comments were neither solicited nor received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,¹⁷ and Rule 19b-4(f)(2)¹⁸ 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 e-mail to rule-comments@sec.gov. Please include File Number SR-EMERALD-2019-21 on the subject line.

¹⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁸ 17 CFR 240.19b-4(f)(2).

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-2019-21. 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-2019-21 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).