

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-91787; File No. SR-EMERALD-2021-09)

May 6, 2021

Self-Regulatory Organizations; MIAX Emerald, LLC; Order Approving Proposed Rule Change to Adopt Exchange Rule 531(a), Reports, to Provide for a New “Liquidity Taker Event Report”

I. Introduction

On March 5, 2021, MIAX EMERALD, LLC (“MIAX Emerald” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to adopt Exchange Rule (“Rule”) 531(a) to provide for a new “Liquidity Taker Event Report” (“Report”). The proposed rule change was published for comment in the Federal Register on March 24, 2021.³ The Commission has received no comments on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

The Report that the Exchange proposes to offer pursuant to new Rule 531(a) would be an historical options data product, generally available on a T+1 basis, that would provide certain information from the prior trading day to any member that wishes to subscribe to the Report.⁴ The information set forth in the proposed Report would be designed to identify for any subscribing member (“Recipient Member”) the amount of time by which certain orders from the Recipient Member that may have been marketable missed an execution due to other liquidity-

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 91356 (March 18, 2021), 86 FR 15759 (March 24, 2021) (“Notice”).

⁴ See proposed Rule 531(a); see also Notice at 15760.

accessing orders responding faster to resting interest on the Exchange's book.⁵ Specifically, for instances during the prior trading day where a Recipient Member attempted to execute against a resting order within 200 microseconds of the Exchange's receipt of the resting order, the proposed Report would provide time-related information and additional detail regarding the resting order, the first response to the resting order that successfully executed against the resting order, and the Recipient Member's responses that missed executing against the resting order.⁶

Proposed Rule 531(a)(1) describes this time-related information and additional detail. With regard to each resting order covered by the proposed Report, the proposed Report would provide: (A) the time the resting order was received by the Exchange;⁷ (B) symbol; (C) order reference number, which is a unique reference number assigned to a new order at the time of receipt; (D) whether the Recipient Member is an affiliate of the member that entered the resting order;⁸ (E) origin type (e.g., priority customer, market maker); (F) side (buy or sell); and (G) displayed price and size of the resting order.⁹

⁵ See proposed Rule 531(a); see also Notice at 15759. The proposed Report would not include real-time market data. See Notice at 15759.

⁶ See proposed Rule 531(a)(1)-(2); see also Notice at 15759-60. The Exchange states that only displayed resting orders would be included in the Report, as the Exchange does not currently offer any non-displayed orders types on its options trading platform. See Notice at 15760 n.7.

⁷ This would reflect, in nanoseconds, the time at which the resting order was received by the Exchange's system. *Id.* at 15760 n.8.

⁸ The Exchange states that the Report would only indicate whether the Recipient Member is an affiliate of the member that entered the resting order and would not include any other information that may indicate the identity of the member that entered the resting order. *Id.* at 15760 n.12. According to the Exchange, including this information would allow the Recipient Member to better understand the scenarios in which it may execute against the orders of its affiliates. *Id.* at 15761.

⁹ See proposed Rule 531(a)(1)(i); see also Notice at 15760. The Exchange states that the displayed price of the resting order may be different from the ultimate execution price

With regard to the execution of the resting order, the proposed Report would provide: (A) the EBBO at the time of execution;¹⁰ (B) the ABBO at the time of execution;¹¹ (C) the time the first response that executed against the resting order was received by the Exchange and the size of the execution and type of the response;¹² (D) the time difference between when the resting order was received by the Exchange and when the first response that executed against the resting order was received by the Exchange;¹³ and (E) whether the response was entered by the Recipient Member.¹⁴

With regard to response(s) sent by the Recipient Member, the proposed Report would provide: (A) a Recipient Member identifier; (B) the time difference between when the first response that executes against the resting order was received by the Exchange and when each response sent by the Recipient Member was received by the Exchange, regardless of whether the

when a resting order is displayed and ranked at different prices upon entry to avoid a locked or crossed market. See Notice at 15760 n.16.

¹⁰ The Exchange uses the term “EBBO” to mean the best bid or offer on the Exchange. See Rule 100; see also Notice at 15760 n.17. If the resting order executes against multiple contra-side responses, only the EBBO at the time of the execution against the first response would be included. See proposed Rule 531(a)(1)(ii)(A).

¹¹ The Exchange uses the term “ABBO” or “Away Best Bid or Offer” to mean the best bid(s) or offer(s) disseminated by other Eligible Exchanges (defined in Rule 1400(g)) and calculated by the Exchange based on market information received by the Exchange from the Options Price Reporting Authority (“OPRA”). See Rule 100; see also Notice at 15760 n.19. If the resting order executes against multiple contra-side responses, only the ABBO at the time of the execution against the first response would be included. See proposed Rule 531(a)(1)(ii)(B).

¹² This time value would reflect, in nanoseconds, the time at which the response was received by the Exchange’s network, which is before the response would be received by the Exchange’s system. See Notice at 15760 n.21.

¹³ This time difference would be provided in nanoseconds. Id. at 15760 n.22.

¹⁴ See proposed Rule 531(a)(1)(ii); see also Notice at 15760. If not entered by the Recipient Member, this data point would be left blank so as not to include any identifying information about other member activity. See Notice at 15761.

Recipient Member's responses executed or not;¹⁵ (C) size and type of each response submitted by the Recipient Member; and (D) response reference number, which is a unique reference number attached to the response by the Recipient Member.¹⁶

In addition, proposed Rule 531(a)(3) would state that the Report would only include trading data related to the Recipient Member, and would not include any other member's trading data other than that listed in paragraphs (1)(i) and (ii) of the proposed rule.¹⁷ Further, the Exchange states that the content of the Report would be specific and tailored to the Recipient Member, and any data included in the Report that relates to a member other than the Recipient Member would be anonymized.¹⁸

According to the Exchange, the proposed Report is designed for members that are interested in gaining insight into latency in connection with orders that failed to execute against an order resting on the Exchange's book.¹⁹ Exchange members have periodically requested from the Exchange's trading operations personnel information concerning the timeliness of their incoming orders and efficacy of their attempts to execute against resting liquidity.²⁰ The Exchange states that the purpose of the proposed Report is to provide Recipient Members with

¹⁵ This time difference would be provided in nanoseconds. For purposes of calculating this duration of time, the Exchange would use the times that the resting order and the Recipient Member's response(s) are received by the Exchange's network, both of which would be before the order and response(s) would be received by the Exchange's system. Id. at 15760 n.23.

¹⁶ See proposed Rule 531(a)(1)(iii); see also Notice at 15760.

¹⁷ See proposed Rule 531(a)(3).

¹⁸ See Notice at 15759.

¹⁹ Id. at 15761.

²⁰ Id. at 15759.

this type of data in a standardized format and on an equal basis.²¹ The Exchange believes that Recipient Members may use the data to optimize their models and trading patterns in an effort to yield better execution results.²² In addition, the Exchange states that the proposed Report is based on a similar data product that another exchange offers for equity securities,²³ and that certain information that would be provided in the proposed Report, including in particular the time duration by which a Recipient Member's orders missed an execution, is similar to information that is provided in the other exchange's data product.²⁴ Moreover, according to the Exchange, other information that would be contained in the proposed Report already is available from existing data sources, such as OPRA and the Exchange's proprietary data feeds, or is information that the Exchange would provide as a convenience to the Recipient Member and that would be known to the Recipient Member even if not included in the Report.²⁵

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.²⁶ In particular, the Commission finds that the proposal is consistent with

²¹ Id. The Exchange states that it intends to submit a separate rule filing with the Commission to propose fees for the Report. Id. at 15759 n.3.

²² Id. at 15761.

²³ Id. at 15759 n.6 (referencing the Missed Opportunity—Latency report that is part of the Trading Insights offering of the NASDAQ Stock Market LLC (“Nasdaq”)); see also Nasdaq Rules, Equity Section 7, Rule 146(a)(2); Securities Exchange Act Release No. 78886 (September 20, 2016), 81 FR 66113 (September 26, 2016) (SR-NASDAQ-2016-101) (order approving Nasdaq Trading Insights data product).

²⁴ See Notice at 15760-62.

²⁵ Id.

²⁶ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Section 6(b)(5) of the Act,²⁷ which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, 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 that those rules not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As discussed above, the Exchange currently fields ad hoc requests from members for information regarding the timeliness of their attempts to execute against resting options liquidity on the Exchange's book.²⁸ The proposal is designed to offer this type of latency information in a systematized way and standardized format to any member that chooses to subscribe to the Report. As a result, the Commission believes that the proposal will make latency information for liquidity-seeking orders available to Exchanges members in a more equalized manner and will increase transparency, particularly for Recipient Members that may not have the expertise to generate the same information on their own. The Commission also believes that the proposed Report may better enable Recipient Members to increase the fill rates for their liquidity-seeking orders. At the same time, as is also discussed above, the Report is designed to prevent a Recipient Member from learning other members' sensitive trading information. The Report would not be a real-time market data product, as it would provide only historical trading data for the previous trading day, generally on a T+1 basis.²⁹ In addition, the data in the Report regarding

²⁷ 15 U.S.C. 78f(b)(5).

²⁸ See Notice at 15759.

²⁹ See proposed Rule 531(a)(4); see also Notice at 15760.

incoming orders that failed to execute would be specific to the Recipient Member's orders,³⁰ and other information in the proposed Report regarding resting orders and executions would be anonymized if it relates to a member other than the Recipient Member.³¹ Accordingly, consistent with Section 6(b)(5) of the Act, the Commission believes that the proposal is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest, and is not designed to permit unfair discrimination.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,³² that the proposed rule change (SR-EMERALD-2021-09), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³³

J. Matthew DeLesDernier
Assistant Secretary

³⁰ See proposed Rule 531(a)(1)(iii) and (a)(3).

³¹ See Notice at 15759.

³² 15 U.S.C. 78s(b)(2).

³³ 17 CFR 200.30-3(a)(12).