

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-98728; File No. SR-EMERALD-2023-28)

October 12, 2023

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

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 October 5, 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 proposes to amend the MIAX Emerald Options Exchange Fee Schedule (the “Fee Schedule”) related to the Options Regulatory Fee.

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 [sic] 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

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

<sup>2</sup> 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 amend the Fee Schedule, to harmonize the language and processes relating to the Options Regulatory Fee (“ORF”) with the language and processes used by other options exchanges.<sup>3</sup> By way of background, the ORF is designed to recover a material portion of the costs to the Exchange of the supervision and regulation of Member<sup>4</sup> customer options business, including performing routine surveillances, investigations, examinations, financial monitoring, as well as policy, rulemaking, interpretive and enforcement activities. The revenue generated from the ORF covers a material portion and when combined with all of the Exchange's other regulatory fees and fines will cover a material portion of the Exchange's regulatory costs. The Exchange monitors the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed the Exchange's total regulatory costs. The Exchange monitors its regulatory costs and revenues at a minimum on a semi-annual basis. If the Exchange determines regulatory revenues exceed or are insufficient to cover a material portion of its regulatory costs, the Exchange will adjust the ORF

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<sup>3</sup> See Securities and Exchange Act Release Nos. 98108 (August 10, 2023), 88 FR 55809 (August 16, 2023) (SR-CboeEDGX-2023-054) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend its Fee Schedule Related to the Options Regulatory Fee); 98109 (August 10, 2023), 88 FR 55801 (August 16, 2023) (SR-CboeBZX-2023-061) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend its Fee Schedule Related to the Options Regulatory Fee); 98446 (September 20, 2023), 88 FR 66100 (September 26, 2023) (SR-BOX-2023-24) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule for Trading on the BOX Options Market LLC Facility To Amend the Language and Process Related to the Options Regulatory Fee).

<sup>4</sup> 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.

by submitting a fee change filing to the Securities and Exchange Commission (the “Commission”). The Exchange notifies Members of adjustments to the ORF via a Regulatory Circular. The Exchange provides Members with such notice at least 30 calendar days prior to the effective date of the change.

The Regulatory Fee section of the Fee Schedule sets forth the details and description of how and when the ORF is assessed. For example, the Fee Schedule explicitly specifies that the Exchange may only increase or decrease the ORF semi-annually, and any such fee change will be effective on the first business day of February or August. The Fee Schedule further states that the Exchange will notify participants of any change in the amount of the fee at least 30 calendar days prior to the effective date of the change.

The Exchange proposes to update the Fee Schedule language relating to the timing of ORF changes. Particularly, the Exchange proposes to eliminate the strict requirement that the ORF may only be modified on the first business day of February or August, and also the explicit requirement that it must provide at least 30 calendar days prior notice to the effective date.

The Exchange first proposes to eliminate the requirement that ORF may only be modified on the first business day of February or August to afford the Exchange increased flexibility in amending the ORF. As noted above, the ORF is based in part on options transactions volume, and as such the amount of ORF collected is variable. If options transactions reported to OCC in a given month increase, the ORF collected from Members may increase as well. Similarly, if options transactions reported to OCC in a given month decrease, the ORF collected from Members may decrease as well. Accordingly, the Exchange monitors the amount of ORF collected to ensure that it does not exceed a material portion of the Exchange’s total regulatory costs. If the Exchange determines that the amount of ORF collected exceeds costs, the proposed

rule change allows the Exchange to adjust the ORF by submitting a fee change filing to the Commission in a month other than just February or August. Although the Exchange proposes to eliminate the explicit language in the fee schedule that provides the Exchange will adjust the ORF only semi-annually, and only on the first business day of February or August, it would continue to monitor its regulatory costs and revenues at a minimum on a semi-annual basis and submit a proposed rule change for each modification of the ORF as needed.

The Exchange also proposes to eliminate the explicit language in the Fee Schedule that it will notify participants of any change in the amount of the fee at least 30 calendar days prior to the effective date of the change. Although the Exchange proposes to eliminate this language from the Fee Schedule, it notes that it will endeavor to notify Members of any planned change to the ORF by Regulatory Circular at least 30 calendar days prior to the effective date of such change. The Exchange believes this proposed change also provides the Exchange additional flexibility. For example, the Exchange often provides fee change notices on the first business day of the month. It may be the case that such date is less than 30 days from the effective date of proposed change (e.g., if the Exchange wished to amend the ORF, effective August 1, 2023, the Exchange would not have met the 30-day notice requirement if it had announced on the first business day of July, as it has been historic practice, since the first business day falls on July 3, 2023). As such, the proposed rule changes provide added flexibility while still committing to provide notice on the timing of any changes to the ORF and ensuring that Members are prepared to configure their systems to properly account for the ORF.

The Exchange notes that the proposed changes will result in ORF processes and fee schedule language that will align with those of its affiliated exchanges, Miami International

Securities Exchange, LLC (“MIAX Options”) and MIAX PEARL, LLC (“MIAX Pearl”).<sup>5</sup> Moreover, other options exchanges recently amended their fees to allow for flexibility to adjust ORF during months other than February or August.<sup>6</sup> The Exchange believes the proposed change provides uniformity across its affiliated options exchanges and reduces potential confusion. It also provides the Exchange added flexibility as to when modifications to the ORF may occur.

#### Implementation Date

The Exchange will announce the effective date of the proposed changes by Regulatory Circular distributed to all Members.

#### 2. Statutory Basis

The Exchange believes that the proposal is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>7</sup> Specifically, the Exchange believes that the proposal is consistent with the Section 6(b)(5)<sup>8</sup> 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 that the proposal is consistent with the Section 6(b)(5)<sup>9</sup> requirement that the rules of an exchange not be

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<sup>5</sup> The Exchange intends to submit an identical proposal for its affiliates MIAX Options and MIAX Pearl.

<sup>6</sup> See supra note 3.

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> Id.

designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes that the proposal is consistent with Section 6(b)(4) of the Act,<sup>10</sup> which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Members and other persons using its facilities.

The Exchange believes the proposed changes to the Fees Schedule are appropriate as it provides the Exchange with more flexibility in its assessment of ORF based on its periodic monitoring of ORF rates. The Exchange also represents that it will continue to monitor its regulatory costs and revenues at a minimum on a semi-annual basis, just as it, and its affiliated options exchanges (including MIAX Pearl and MIAX) do today. The Exchange believes that the proposed elimination of language specifying that the Exchange may only increase or decrease the ORF on the first business day February or August is reasonable because it is designed to afford the Exchange increased flexibility in making necessary adjustments to the ORF, as the Exchange is required to monitor the amount collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed total regulatory costs.

The Exchange also represents that it will endeavor to provide notice of any changes at least 30 days in advance of the effective date of such change, thereby providing Members with adequate time to make any necessary adjustments to accommodate any proposed changes. Taking out the strict requirements from the Fee Schedule, however, will provide the Exchange flexibility in modifying ORF and being able to adjust ORF even if it doesn't meet the strict 30-day deadline in the event extenuating circumstances prevent the Exchange from meeting this deadline or in the event such notice is a day or two less than 30 days due to when the first business days of the month fall. For example, as noted above, the Exchange often provides fee

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<sup>10</sup> 15 U.S.C. 78f(b)(4).

change notices on the first business day of the month. It may be the case that such date is less than 30 days from the effective date of proposed change (e.g., if the Exchange wished to amend the ORF, effective, August 1, 2023, the Exchange would not have met the 30-day notice requirement if it had announced on the first business day of July, as it has been historic practice, since the first business day falls on July 3, 2023).

The Exchange believes that the proposal is reasonable, equitable and not unfairly discriminatory because it conforms to the process and fee schedule language used by two of its affiliated options exchanges, thereby providing consistency across the MIAX family options exchanges and reducing potential confusion. The proposed changes also apply uniformly to all Members subject to ORF. As noted above, other options exchanges are also not confined to making ORF changes on the first business day of February or August or required to provide 30 day notice.<sup>11</sup>

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

The Exchange does not believe that the proposal will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In this regard and as indicated above, the Exchange notes that the proposal is substantially similar in all material respects to filings submitted by Cboe EDGX Exchange, Inc. (“EDGX”), Cboe BZX Exchange, Inc. (“BZX”), and BOX Options Market LLC (“BOX”).<sup>12</sup> This proposal does not create an unnecessary or inappropriate inter-market burden on competition because it merely amends the Fee Schedule to modify the timing and notice requirements relating to the modification of the ORF and conforms to the timing and notice requirements used by other options exchanges within

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<sup>11</sup> See supra note 3.

<sup>12</sup> Id.

their fee schedules.<sup>13</sup> Further, ORF is a regulatory fee that supports regulation in furtherance of the purposes of the Act. The Exchange is obligated to ensure that the amount of regulatory revenue collected from the ORF, in combination with its other regulatory fees and fines, does not exceed regulatory costs and the proposed rule change does not seek to change that.

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>14</sup> and Rule 19b-4(f)(6)<sup>15</sup> thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>16</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>17</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

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<sup>13</sup> Id.

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</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>16</sup> 17 CFR 240.19b-4(f)(6).

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



waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Exchange is requesting the waiver because it will allow the Exchange to exercise more flexibility with respect to timing of changes to its assessment of ORF based on its periodic monitoring of ORF rates and allow the Exchange to mirror similar provisions already in place on other exchanges. Finally, the Exchange states that the proposed change would not introduce any novel regulatory issues. 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>18</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:

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<sup>18</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).

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-2023-28 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-2023-28. 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 (<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-2023-28 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

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

**Sherry R. Haywood,**

*Assistant Secretary.*

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<sup>19</sup> 17 CFR 200.30-3(a)(12) and (a)(59).