

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-98734; File No. SR-EMERALD-2023-26)

October 12, 2023

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Fee Schedule for Purge Ports

Pursuant to 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 September 29, 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, 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 amend the MIAX Emerald Options Exchange Fee Schedule (the “Fee Schedule”) to amend fees for Purge Ports.³

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The proposed fee change is based on a recent proposal by Nasdaq Phlx LLC (“Phlx”) to adopt fees for purge ports. See Securities Exchange Act Release No. 97825 (June 30, 2023), 88 FR 43405 (July 7, 2023) (SR-Phlx-2023-28).

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 is proposing to amend the fees for Purge Ports, which is a function enabling Market Makers⁴ to cancel all open quotes or a subset of open quotes through a single cancel message. The Exchange currently provides Market Makers the option to purchase Purge Ports to assist in their quoting activity. Purge Ports provide Market Makers with the ability to send purge messages to the Exchange System.⁵ Purge Ports are not capable of sending or receiving any other type of messages or information. The use of Purge Ports is completely optional and no rule or regulation requires that a Market Maker utilize them.

Unlike other options exchanges that charge fees for Purge Ports on a per port basis,⁶ the Exchange assesses a flat fee of \$1,500 per month, regardless of the number of Purge Ports. Today, a Market Maker may request and be allocated two (2) Purge Ports per Matching Engine to which it connects and not all Market Makers connect to all Matching Engines. The Exchange

⁴ The term “Market Makers” refers to Lead Market Makers (“LMMs”), Primary Lead Market Makers (“PLMMs”), and Registered Market Makers (“RMMs”) collectively. See Exchange Rule 100.

⁵ The term “System” means the automated trading system used by the Exchange for the trading of securities. See Exchange Rule 100.

⁶ See Cboe BXZ Exchange, Inc. (“BXZ”) Options Fee Schedule, Options Logical Port Fees, Purge Ports (\$750 per purge port per month); Cboe EDGX Exchange, Inc. (“EDGX”) Options Fee Schedule, Options Logical Port Fees, Purge Ports (\$750 per purge port per month); Cboe Exchange, Inc. (“Cboe”) Fee Schedule (\$850 per purge port per month). See also Nasdaq GEMX, Options 7, Pricing Schedule, Section 6.C.(3). Nasdaq GEMX, LLC (“Nasdaq GEMX”) assesses its members \$1,250 per SQF Purge Port per month, subject to a monthly cap of \$17,500 for SQF Purge Ports and SQF Ports, applicable to market makers. See also Securities Exchange Act Release No. 97825 (June 30, 2023), 88 FR 43405 (July 7, 2023) (SR-Phlx-2023-28).

now proposes to amend the fee for Purge Ports to align more with other exchanges who charge on a per port basis by providing two (2) Purge Ports per Matching Engine for a monthly flat fee of \$600 per month per Matching Engine. The only difference with a per port structure being is that Market Makers receive two (2) Purge Ports per Matching Engine for the same proposed monthly fee, rather than be charged separate fee for each Purge Port. The Exchange proposes to charge the proposed fee for Purge Ports per Matching Engine, instead on a per Purge Port basis, due to its system architecture which provides two (2) Purge Ports per Matching Engine for redundancy purposes. In addition, the proposed fee would be lower than what other exchanges charge on a per port basis, notwithstanding that the Exchange is providing up to two (2) Purge Ports for that same low fee.⁷

Similar to a per port charge, Market Makers would be also able to elect the number of Matching Engines they connect to and pay the applicable fee. The Exchange believes the proposed fee provides Market Makers with flexibility to control their Purge Ports costs based on the number of Matching Engines it elects to connect to.

* * * * *

A logical port represents a port established by the Exchange within the Exchange's system for trading and billing purposes. Each logical port grants a Member the ability to accomplish a specific function, such as order entry, order cancellation, access to execution reports, and other administrative information.

Purge Ports are designed to assist Market Makers⁸ in the management of, and risk control over, their quotes, particularly if the firm is dealing with a large number of securities. For

⁷ Id.

⁸ Members seeking to become registered as a Market Maker must comply with the applicable requirements of Chapter VI of the Exchange's Rules.

example, if a Market Maker detects market indications that may influence the execution potential of their quotes, the Market Maker may use Purge Ports to reduce uncertainty and to manage risk by purging all quotes in a number of securities. This allows Market Makers to seamlessly avoid unintended executions, while continuing to evaluate the market, their positions, and their risk levels. Purge Ports are used by Market Makers that conduct business activity that exposes them to a large amount of risk across a number of securities. Purge Ports enable Market Makers to cancel all open quotes, or a subset of open quotes through a single cancel message. The Exchange notes that Purge Ports increase efficiency of already existing functionality enabling the cancellation of quotes.

The Exchange operates highly performant systems with significant throughput and determinism which allows participants to enter, update and cancel quotes at high rates. Market Makers may currently cancel individual quotes through the existing functionality, such as through the use of a mass cancel message by which a Market Maker may request that the Exchange remove all or a subset of its quotations and block all or a subset of its new inbound quotations.⁹As a result, Market Makers can currently cancel quotes in rapid succession across their existing logical ports¹⁰ or through a single cancel message, all open quotes or a subset of open quotes.

Similarly, Market Makers may also use cancel-on-disconnect control when they experience a disruption in connection to the Exchange to automatically cancel all quotes, as configured or instructed by the Member or Market Maker.¹¹ In addition, the Exchange already

⁹ See Exchange Rule 519C(a) and (b).

¹⁰ Current Exchange port functionality supports cancellation rates that exceed one thousand messages per second and the Exchange's research indicates that certain market participants rely on such functionality and at times utilize such cancellation rates.

¹¹ See Exchange Rule 516C(c).

provides similar ability to mass cancel quotes through the Exchange's risk controls, which are offered at no charge that enables Market Makers to establish pre-determined levels of risk exposure, and can be used to cancel all open quotes.¹² Accordingly, the Exchange believes that the Purge Ports provide an efficient option as an alternative to already available services and enhance the Participant's ability to manage their risk.

The Exchange believes that market participants benefit from a dedicated purge mechanism for specific Market Makers and to the market as a whole. Market Makers will have the benefit of efficient risk management and purge tools. The market will benefit from potential increased quoting and liquidity as Market Makers may use Purge Ports to manage their risk more robustly. Only Market Makers that request Purge Ports would be subject to the proposed fees, and other Market Makers can continue to operate in exactly the same manner as they do today without dedicated Purge Ports, but with the additional purging capabilities described above.

Implementation Date

The proposed fees will be effective October 1, 2023.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹³ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁴ in particular, in that it is not designed to permit unfair discrimination among customers, brokers, or dealers. The Exchange also believes that its proposed fee is consistent with Section 6(b)(4) of the Act¹⁵

¹² See Exchange Rule 532.

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ 15 U.S.C. 78f(b)(4).

because it represents an equitable allocation of reasonable dues, fees and other charges among market participants.

The Exchange believes that the proposed rule change would promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market because offering Market Makers optional service and flexible fee structures promotes choice, flexibility, efficiency, and competition. The Exchange believes Purge Ports enhance Market Makers' ability to manage quotes, which would, in turn, improve their risk controls to the benefit of all market participants. The Exchange believes that Purge Ports foster cooperation and coordination with persons engaged in facilitating transactions in securities because designating Purge Ports for purge messages may encourage better use of such ports. This may, concurrent with the ports that carry quotes and other information necessary for market making activities, enable more efficient, as well as fair and reasonable, use of Market Makers' resources. Similar connectivity and functionality is offered by options exchanges, including the Exchange's own affiliated options exchanges, and other equities exchanges.¹⁶ The Exchange believes that proper risk management, including the ability to efficiently cancel multiple quotes quickly when necessary, is similarly valuable to firms that trade in the equities market, including Market Makers that have heightened quoting obligations that are not applicable to other market participants.

Purge Ports do not relieve Market Makers of their quoting obligations or firm quote obligations under Regulation NMS Rule 602.¹⁷ Specifically, any interest that is executable

¹⁶ See supra notes 3 and 6. See also Securities Exchange Act Release No. 77613 (April 13, 2016), 81 FR 23023 (April 19, 2016). See also Securities Exchange Act Release Nos. 79956 (February 3, 2017), 82 FR 10102 (February 9, 2017) (SR- BatsBZX-2017-05); 79957 (February 3, 2017), 82 FR 10070 (February 9, 2017) (SR-BatsEDGX-2017-07); 83201 (May 9, 2018), 83 FR 22546 (May 15, 2018) (SR-C2-2018-006).

¹⁷ See Exchange Rule 604. See also generally Chapter VI of the Exchange's Rules.

against a Member's or Market Maker's quotes that is received by the Exchange prior to the time of the removal of quotes request will automatically execute. Market Makers that purge their quotes will not be relieved of the obligation to provide continuous two- sided quotes on a daily basis, nor will it prohibit the Exchange from taking disciplinary action against a Market Maker for failing to meet their continuous quoting obligation each trading day.¹⁸

The Exchange is not the only exchange to offer this functionality and to charge associated fees.¹⁹ The Exchange believes the proposed fee for Purge Ports is reasonable because it is lower than that currently charged by other exchanges. For example, BZX and EDGX charge a fee of \$750 per purge port per month, Cboe charges \$850 per purge port per month, Nasdaq GEMX assesses its members \$1,250 per SQF Purge Port per month, subject to a monthly cap of \$17,500 for SQF Purge Ports and SQF Ports.²⁰

The Exchange believes it is reasonable to charge \$600 per month for Purge Ports as such ports represent targeted enhancement of technology and were specially developed to allow for the sending of a single message to cancel multiple quotes, thereby assisting firms in effectively managing risk. The Exchange also believes that a Member that chooses to utilize Purge Ports may, in the future, reduce their need for additional ports by consolidating cancel messages to the Purge Port and thus freeing up some capacity of the existing logical ports and, therefore, allowing for increased message traffic without paying for additional logical ports. Purge Ports provide the ability to cancel multiple quotes across multiple ports with less messaging from the firms using the ports and therefore may create efficiencies for firms and provide a more economical solution to their risk management needs. In addition, Purge Port

¹⁸ Id.

¹⁹ See supra notes 3 and 6.

²⁰ See supra note 6.

requests may cancel quotes submitted over numerous ports and contain added functionality to purge only a subset of these quotes. Effective risk management is important both for individual market participants that choose to utilize risk features provided by the Exchange, as well as for the market in general. As a result, the Exchange believes that it is appropriate to charge fees for such functionality as doing so aids in the maintenance of a fair and orderly market.

The Exchange also believes that its ability to set fees for Purge Ports is subject to significant substitution-based forces because Market Makers are able to rely on currently available services both free and those they receive when using existing trading protocols. If the value of the efficiency introduced through the Purge Port functionality is not worth the proposed fees, Market Makers will simply continue to rely on the existing functionality and not pay for Purge Ports. In that regard, Market Makers may currently cancel individual quotes through the existing functionality, such as through the use of a mass cancel message by which a Market Maker may request that the Exchange remove all or a subset of its quotations and block all or a subset of its new inbound quotations. Market Makers already can also cancel quotes individually and by utilizing Exchange protocols that allow them to develop proprietary systems that can send cancel messages at a high rate.²¹ In addition, the Exchange already provides similar ability to mass cancel quotes through the Exchange's risk controls, which are offered at no charge that enables Market Makers to establish pre-determined levels of risk exposure, and can be used to cancel all open quotes.²²

²¹ Current Exchange port functionality supports cancellation rates that exceed one thousand messages per second and the Exchange's research indicates that certain Participants rely on such functionality and at times utilize such cancellation rates.

²² See Exchange Rule 532.

Similarly, Market Makers may use cancel-on-disconnect control when they experience a disruption in connection to the Exchange to immediately cancel all pending Exchange.²³ Finally, this existing purging functionality will allow Participants to achieve essentially the same outcome in canceling quotes as they would by utilizing the Purge Ports. Accordingly, the Exchange believes that the proposed Purge Ports fee is reasonable because it is related to the efficiency of Purge Ports related to other means and services already available which are either free or already a part of a fee assessed to the Participant's for existing connectivity. Accordingly, because Purge Ports provide additional optional functionality, excessive fees would simply serve to reduce or eliminate demand for this optional product.

The Exchange also believes that offering Purge Ports at the Matching Engine level promotes risk management across the industry, and thereby facilitates investor protection. Some market participants, in particular the larger firms, could and do build similar risk functionality (as described above) in their trading systems that permit the flexible cancellation of quotes entered on the Exchange at a high rate. Offering Matching Engine level protections ensures that such functionality is widely available to all firms, including smaller firms that may otherwise not be willing to incur the costs and development work necessary to support their own customized mass cancel functionality.

As noted above, the Exchange is not the only exchange to offer dedicated Purge Ports, and the proposed rate is lower than that charged by other exchanges for similar functionality. The Exchange also believes that moving to a per Matching Engine fee is reasonable due to the Exchange's architecture that provides it the ability to provide two (2) Purge Ports per Matching Engine for a fee that would still be lower than other exchanges

²³ See Exchange Rule 516C(c).

that charge on a per port basis. Generally speaking, restricting the Exchange's ability to charge fees for these services discourages innovation and competition. Specifically in this case, the Exchange's inability to offer similar services to those offered by other exchanges, and charge reasonable and equitable fees for such services, would put the Exchange at a significant competitive disadvantage and, therefore, serve to restrict competition in the market – especially when other exchanges assess comparable fees higher than those proposed by the Exchange.

The Exchange believes that the proposed Purge Port fees are equitable because the proposed Purge Ports are completely voluntary as they relate solely to optional risk management functionality.

The Exchange also believes that the proposed amendments to its fee schedule are not unfairly discriminatory because they will apply uniformly to all Market Makers that choose to use the optional Purge Ports. Purge Ports are completely voluntary and, as they relate solely to optional risk management functionality, no Market Maker is required or under any regulatory obligation to utilize them. All Market Makers that voluntarily select this service option will be charged the same amount for the same services. All Market Makers have the option to select any connectivity option, and there is no differentiation among Market Makers with regard to the fees charged for the services offered by the Exchange.

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 not necessary or appropriate in furtherance of the purposes of the Act. Purge Ports are completely voluntary and are available to all Market Makers on an equal basis at the same cost. While the Exchange believes that Purge Ports provide a valuable service, Market

Makers can choose to purchase, or not purchase, these ports based on their own determination of the value and their business needs. No Market Makers is required or under any regulatory obligation to utilize Purge Ports. Accordingly, the Exchange believes that Purge Ports offer appropriate risk management functionality to firms that trade on the Exchange without imposing an unnecessary or inappropriate burden on competition.

Furthermore, the Exchange operates in a highly competitive environment, and its ability to price the Purge Ports is constrained by competition among exchanges that offer similar functionality. As discussed, there are currently a number of similar offers available to market participants for higher fees at other exchanges. Proposing fees that are excessively higher than established fees for similar functionality would simply serve to reduce demand for the Purge Ports, which as discussed, market participants are under no obligation to utilize. It could also cause firms to shift trading to other exchanges that offer similar functionality at a lower costs, adversely impacting the overall trading on the Exchange and reducing market share. In this competitive environment, potential purchasers are free to choose which, if any, similar product to purchase to satisfy their need for risk management. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges.

The Exchange also does not believe the proposal would cause any unnecessary or inappropriate burden on intermarket competition as other exchanges are free to introduce their own purge port functionality and lower their prices to better compete with the Exchange's offering. The Exchange does not believe the proposed rule change would cause any unnecessary or inappropriate burden on intramarket competition. Particularly, the proposal would apply uniformly to any market participant, in that it does not differentiate between Market Makers.

The proposal would allow any interested Market Makers to purchase Purge Port functionality based on their business needs.

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,²⁴ and Rule 19b-4(f)(2)²⁵ 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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-EMERALD-2023-26 on the subject line.

²⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

²⁵ 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-2023-26. 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-2023-26 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.²⁶

Sherry R. Haywood,
Assistant Secretary.

²⁶ 17 CFR 200.30-3(a)(12).