

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-85208; File No. SR-EMERALD-2019-05)

February 27, 2019

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Exchange Rule 602, Appointment of Market Makers

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 February 19, 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 602, Appointment of Market Makers, in order to harmonize its rule to the rules of the Exchange’s affiliate, Miami International Securities Exchange, LLC (“MIAX Options”).

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

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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 MIAX Emerald Rule 602, Appointment of Market Makers, in order to harmonize its rule to the rules of MIAX Options.

Background

MIAX Emerald plans to commence operations as a national securities exchange registered under Section 6 of the Act<sup>3</sup> on March 1, 2019. As described more fully in MIAX Emerald's Form 1 application,<sup>4</sup> the Exchange is an affiliate of MIAX Options and MIAX PEARL, LLC ("MIAX PEARL"). MIAX Emerald Rules, in their current form, were filed as Exhibit B to its Form 1 on August 16, 2018, and at that time, the above mentioned rules, were substantially similar to the rules of the MIAX Options exchange. In the time between when the Exchange filed its Form 1 and the time the Exchange received its approval order, MIAX Options made changes to its rule book. In order to ensure consistent operation of both MIAX Emerald and MIAX Options through having consistent rules, the Exchange proposes to amend MIAX Emerald Rules as described below.

Proposal

The Exchange proposes to amend MIAX Emerald Rule 602, Appointment of Market Makers, to specify the method by which LMMs and RMMs would request appointments to (and

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<sup>3</sup> 15 U.S.C. 78f.

<sup>4</sup> See Securities Exchange Act Release No. 84891 (December 20, 2018), 83 FR 67421 (December 28, 2018) (File No. 10-233) (order approving application of MIAX EMERALD, LLC for registration as a national securities exchange).

relinquishment of appointments from) one or more classes of option contracts traded on the Exchange pursuant to Rule 602(a). These changes would make MIAX Emerald Rule 602 consistent with MIAX Options Rule 602 and are identical to changes made by MIAX Options when it modified its rule.<sup>5</sup> The Exchange believes this proposal would harmonize the appointment process between MIAX Options and MIAX Emerald, and would promote efficiency for both the Exchange and for these types of Market Makers.<sup>6</sup> Other option exchanges also specify a method which governs the appointment of market makers to classes of option contracts traded on the exchange, however, these methods, while generally automated, differ somewhat across exchanges.<sup>7</sup>

Once a Member<sup>8</sup> has qualified as either an LMM or an RMM, such Market Maker may request an appointment (or, following an appointment, relinquishment from an appointment) in one or more option classes pursuant to Rule 602. The Exchange's proposal seeks to specify that LMMs and RMMs would be required to use an Exchange approved electronic interface to request appointments (and relinquishment of appointments) to one or more classes of option contracts. A Primary Lead Market Maker ("PLMM"),<sup>9</sup> however, would go through a different, more

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<sup>5</sup> See Securities Exchange Act Release No. 83577 (July 2, 2018), 83 FR 31812 (July 9, 2018) (SR-MIAX-2018-13).

<sup>6</sup> The term "Market Makers" refers to "Lead Market Makers," "Primary Lead Market Makers" and "Registered Market Makers" collectively. See Exchange Rule 100.

<sup>7</sup> See, e.g., Cboe BZX Exchange, Inc. ("Cboe BZX") Rules 22.3(a),(b) (Market Maker Registration); see also Nasdaq PHLX, LLC ("Nasdaq Phlx") Rule 3212(b) (Registration as a Market Maker); Nasdaq Options Market ("NOM"), Chapter VII (Market Participants), Section 3(a),(b) (Continuing Market Maker Registration); NYSE American, LLC ("NYSE American"), Rule 923NY (Appointment of Market Makers).

<sup>8</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.

<sup>9</sup> A "Primary Lead Market Maker" is a Lead Market Maker appointment by the Exchange to act as the Primary Lead Market Maker for the purpose of making markets in securities traded on the Exchange. The Primary Lead Market Maker is vested with the rights and

extensive appointment process. Accordingly, the Exchange intentionally excluded PLMMs from this proposal. The Exchange believes it is appropriate to exclude PLMMs from this appointment method because the Board or designated committee would appoint only one PLMM to each options class traded on the Exchange, as opposed to the multiple number of LMMs and RMMs, and because of the heightened obligations associated with performing the responsibilities of a PLMM.<sup>10</sup> Because of the heightened responsibilities of PLMMs, the Exchange believes that it is appropriate to have a different method for PLMMs on the one hand, and LMMs and RMMs on the other hand, with respect to the method by which appointments (and relinquishments of appointments) are requested.

Specifically, Rule 602(a) provides that “[t]he Board or a committee designated by the Board shall appoint Market Makers to one or more classes of option contracts traded on the Exchange.”<sup>11</sup> In addition to having the authority to appoint one PLMM to each options class, “[t]he Exchange will impose an upper limit on the aggregate number of Market Makers that may quote in each class of options (“Class Quoting Limit” or “CQL”).” Currently, the CQL is set at fifty (50) Market Makers per option class but the Exchange may “increase the CQL for an existing or new option class if the President determines that it would be appropriate.”<sup>12</sup> Further, Rule 602(c)(2) provides that “Market Makers requesting an appointment in a class of options will be considered for the appointment in accordance with paragraphs (a), (b) and (f) of this

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responsibilities specified in Chapter VI of these Rules with respect to Primary Lead Market Makers. See Exchange Rule 100.

<sup>10</sup> See, for example, Exchange Rules 603 and 604 for certain heightened obligations of PLMMs.

<sup>11</sup> See Rule 602(a).

<sup>12</sup> See Rule 602(c).

Rule 602, provided the number of Market Makers appointed in the options class does not exceed the CQL.”

In making appointments of Market Makers to one or more classes of option contracts traded on the Exchange, the Board or designated committee shall consider the financial resources available to the Market Maker; the Market Maker’s experience and expertise in market making or options trading; the preferences of the Market Maker to receive appointment(s) in specific option class(es); and the maintenance and enhancement of competition among Market Makers in each class of option contracts to which they are appointed.<sup>13</sup> Rule 602(c)(2) also states that, when the number of Market Makers appointed in the options class equals the CQL, all other Market Makers requesting to be appointed in that options class will be wait-listed in the order in which they submitted their request.<sup>14</sup>

Under the current Rule, “[t]he Board or designated committee may suspend or terminate any appointment of a Market Maker under this Rule [602] and may make additional appointments or change the option classes included in a Market Maker’s appointed classes whenever, in the Board’s or designated committee’s judgment, the interests of a fair and orderly market are best served by such action.”<sup>15</sup> Moreover, the Exchange “shall periodically conduct an evaluation of Market Makers to determine whether they have fulfilled performance standards relating to, among other things, quality of markets, competition among Market Makers, observance of ethical standards, and administrative factors. The Exchange may consider any relevant information, including but not limited to the results of a Market Maker evaluation questionnaire, trading data, a Market Maker’s regulatory history

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<sup>13</sup> See Rule 602(a).

<sup>14</sup> See Rule 602(c)(2).

<sup>15</sup> See Rule 602(e).

and such other factors and data as may be pertinent in the circumstances.”<sup>16</sup> If the Exchange finds that a Market Maker has not met the performance standards, the Exchange may take action, including suspending, terminating or restricting a Market Maker’s appointment or registration.<sup>17</sup>

The Exchange proposes to amend MIAX Emerald Rule 602 solely to specify the method by which LMMs and RMMs would request appointments to (or relinquishment of appointments from) one or more classes of option contracts traded on the Exchange pursuant to Rule 602(a). In particular, the Exchange proposes to adopt Interpretations & Policies .02 to Rule 602 to provide that, “Lead Market Makers and Registered Market Makers shall request appointments to (and relinquishment of appointments from) one or more classes of option contracts traded on the Exchange pursuant to Rule 602(a) via an Exchange approved electronic interface, which request must be submitted prior to 6:00 p.m. Eastern Time of the business day immediately preceding the next trading day. The Exchange approved electronic interface will also ensure that, before any appointment request (or relinquishment of an appointment) is approved, the CQL established by Rule 602 has not been exceeded. Appointments (and relinquishments of appointments) shall become effective on the day after the request is submitted, provided that it has been approved. Approvals and denials of appointments (and relinquishment of appointments) shall be communicated by the Exchange via the same Exchange approved electronic interface through which the request was made.”

The Exchange believes that requiring LMMs and RMMs to use an Exchange approved electronic interface to request appointments to one or more classes of option contracts would enable LMMs and RMMs to efficiently request appointments (and relinquishment of appointments) and get

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<sup>16</sup> See Rule 602(f).

<sup>17</sup> See id.

notified of approvals or denials related to such requests, which, in turn, would limit the time and resources expended by such Market Makers and the Exchange on the appointment process.

The Exchange also believes this proposal would provide LMMs and RMMs with efficient access to the securities in which they want to make markets and disseminate competitive quotations by harmonizing the process to be identical to the process currently in place on MIAX Options, which would provide additional liquidity and enhance competition in those securities. The Exchange would retain the ability to suspend or terminate any appointment of a Market Maker if necessary to maintain a fair and orderly market.<sup>18</sup> The Exchange notes that the proposed changes to Rule 602 are identical to changes made by MIAX Options when it modified its rule,<sup>19</sup> and therefore raises no new or novel issues. Furthermore, the Exchange notes that it is only proposing to specify the method by which LMMs and RMMs would request appointments to (and relinquishment of appointments from) one or more classes of option contracts traded on the Exchange pursuant to Rule 602(a), and would not change the substantive provisions of the rules including the CQL, quoting requirements, or the Exchange's ability to make additional appointments or change the option classes included in a Market Maker's requested appointment whenever, in the Board's or designated committee's judgment, the interests of a fair and orderly market are best served by such action.

## 2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act<sup>20</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>21</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and

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<sup>18</sup> See Rule 602(e).

<sup>19</sup> See supra note 5.

<sup>20</sup> 15 U.S.C. 78f(b).

<sup>21</sup> 15 U.S.C. 78f(b)(5).

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.

The Exchange believes that requiring LMMs and RMMs to use an Exchange approved electronic interface to request appointments to one or more classes of option contracts would enable LMMs and RMMs to efficiently request appointments (and relinquishment of appointments) and get notified of approvals or denials related to such requests, which, in turn, would limit the time and resources expended by such Market Makers and the Exchange on the appointment process, through the use of an automated tool. The Exchange believes the proposed change would reduce the burden on both LMMs and RMMs, and Exchange staff by harmonizing the process to be identical to MIAX Options, which would result in a fair and reasonable use of resources to the benefit of all market participants. In particular, the proposal to require LMMs and RMMs to use an Exchange approved electronic interface to request to be appointed to a class, and to make changes thereto, is consistent with Act because it would provide LMMs and RMMs with efficient access to the securities in which they want to make markets by harmonizing the process to be identical to the process currently in place on MIAX Options. The Exchange also believes that allowing LMMs and RMMs to request relinquishment from appointments using the same process used by LMMs and RMMs to request appointments, would serve to promote just and equitable principles of trade and benefit investors and the public interest by establishing a systematic way for LMMs and RMMs to manage their appointments and provide more clarity with respect to the process, which also serves to promote consistency and transparency for such Market Makers.

In addition, the Exchange believes that clarifying the process by which LMMs and RMMs request appointments and relinquishment of appointments on an automated basis and harmonizing such process with that of MIAX Options is likewise consistent with the Act. First, the Board or a designated committee will continue to have responsibility for approving the appointments requested by LMMs and RMMs in one or more classes of options contracts traded on the Exchange. The Board or a designated committee would continue to consider the relevant factors and conduct an evaluation of Market Makers prior to their appointment.<sup>22</sup> In addition, as noted above, the Exchange would continue to have authority to suspend or terminate any Market Maker appointment in the interest of a fair and orderly market, including, if necessary to prevent fraudulent and manipulative acts and practices and protect investors, or if a Market Maker does not satisfy its obligations with respect to an appointment.<sup>23</sup> Furthermore, the Exchange approved electronic interface utilized by LMMs and RMMs to request an appointment will ensure that, before any additions to a Market Maker's appointment are approved, the CQL established by Rule 602 has not been exceeded. Accordingly, the Exchange believes this proposal is consistent with Section 6(b) of the Exchange Act.<sup>24</sup>

The proposed rule change would not result in unfair discrimination, as it applies to all LMMs and RMMs equally. As noted above, the Exchange intentionally excluded PLMMs from this proposal. The Exchange believes it isn't unfairly discriminatory to exclude PLMMs from this new appointment method because the Board or designated committee appoints only one PLMM to each options class traded on the Exchange, as opposed to the multiple number of

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<sup>22</sup> See supra notes 11-15.

<sup>23</sup> See Rule 602(e). See also Rule 600(c) (regarding the Exchange's ability to suspend or terminate a Market Maker's registration based on "a determination that such Member has failed to properly perform as a Market Maker.").

<sup>24</sup> 15 U.S.C. 78f(b).

LMMs and RMMs, and because of the heightened obligations associated with performing the responsibilities of a PLMM.<sup>25</sup> Because of these heightened responsibilities of PLMMs, the Exchange believes that it is not unfairly discriminatory to treat PLMMs differently from LMMs and RMMs with respect to the method by which appointments (and relinquishments of appointments) are requested.

Further, the proposed rule change would provide LMMs and RMMs with efficient access to the securities in which they want to make markets and disseminate competitive quotations by harmonizing the process to be identical to the process currently in place on MIAX Options, which would provide additional liquidity and enhance competition in those securities, while limiting the time and resources expended by such Market Makers and the Exchange on the appointment process. Nevertheless, Market Makers would still be required to comply with certain obligations to maintain their status as a Market Maker, including that they provide continuous, two-sided quotations in their appointed securities.<sup>26</sup>

Finally, as noted above, specifying the method of the appointment process would also align the rules of the Exchange with the rules of other options exchanges and to the rules of MIAX Options, where Market Makers presently have the ability to select and make changes to their appointments and registrations via an exchange-approved electronic interface.<sup>27</sup> The Exchange believes this consistency across exchanges would remove impediments to and perfect the mechanism of a free and open market by ensuring that members, regulators and the public can more easily navigate the Exchange's rulebook and better understand the appointment process.

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<sup>25</sup> See supra note 10.

<sup>26</sup> See Rule 604.

<sup>27</sup> See supra note 7.

Additionally, the Exchange believes that although MIAX Emerald rules may, in certain instances, intentionally differ from MIAX Options rules, the proposed changes will promote uniformity with MIAX Options with respect to rules that are intended to be identical. The Exchange believes that it will reduce the potential for confusion by its members that are also members of MIAX Options with respect to rules that are intended to be identical.

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 that is not necessary or appropriate in furtherance of the purposes of the Act because it provides for the same process to a group of similarly situated market participants, LMMs and RMMs. The proposed rule change would provide LMMs and RMMs with efficient access to the securities in which they want to make markets and disseminate competitive quotations by harmonizing the process to be identical to the process currently in place on MIAX Options, which would provide additional liquidity and enhance competition in those securities, while limiting the time and resources expended by such Market Makers and the Exchange on the appointment process. Additionally, the proposed rule change will help to provide more clarity with respect to the appointment process, which also serves to promote consistency and transparency for such Market Makers.

The Exchange does not believe the proposed rule change would help these Market Makers to the detriment of market participants on other exchanges, particularly because the proposed appointment process for LMMs and RMMs is meant to simply create an efficient and clear process by which such Market Makers can request an appointment, and it is similar to the appointment and registration processes for market makers already in place on other exchanges.<sup>28</sup> LMMs and RMMs would still be subject to the same obligations with respect to its appointment;

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<sup>28</sup> Id.

however, the proposed rule change would make the appointment process efficient for such Market Makers. The Exchange believes that the proposed rule change would relieve any burden on, or otherwise promote, competition, as it would enable LMMs and RMMs to efficiently request appointments (and relinquishment of appointments) and get notified of approvals or denials related to such requests, which, in turn, would limit the time and resources expended by such Market Makers and the Exchange on the appointment process.

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 Act<sup>29</sup> and Rule 19b-4(f)(6)<sup>30</sup> thereunder.

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>31</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>32</sup> 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 with the Commission, the Exchange

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<sup>29</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>30</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 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>31</sup> 17 CFR 240.19b-4(f)(6).

<sup>32</sup> 17 CFR 240.19b-4(f)(6)(iii).

has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that waiver of the operative delay will allow the proposed rules to become operative before the Exchange intends to commence operations as a national exchange. The Commission notes that the proposed rule change is based on a substantively identical rule of MIAX Options and thus raises no new novel or substantive issues. Accordingly, the Commission hereby waives the operative delay and designates the proposal operative upon filing.<sup>33</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:

##### Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

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<sup>33</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).

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-EMERALD-2019-05 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-2019-05. 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-2019-05 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.<sup>34</sup>

Eduardo A. Aleman  
Deputy Secretary

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<sup>34</sup> 17 CFR 200.30-3(a)(12).