

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-99829; File No. SR-EMERALD-2024-10)

March 21, 2024

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the MIAX Emerald 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 March 8, 2024, 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 (“Fee Schedule”).

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 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 amend the exchange grouping of options exchanges within the routing fee table in Section 1)b) of the Fee Schedule, Fees for Customer Orders Routed to Another Options Exchange, to (i) adjust the groupings of options exchanges; and (ii) adopt a new routing tier. The Exchange originally filed this proposal on January 31, 2024 (SR-EMERALD-2024-04). On February 14, 2024, the Exchange withdrew SR-EMERALD-2024-04 and resubmitted the proposal as SR-EMERALD-2024-07. On February 26, 2024, SR-EMERALD-2024-07, was rejected due to a technical issue with the filing. On February 26, 2024, the Exchange resubmitted a corrected proposal as SR-EMERALD-2024-08. On March 8, 2024, the Exchange withdrew SR-EMERALD-2024-08 and resubmitted this proposal.

Background

Currently, the Exchange assesses routing fees based upon (i) the origin type of the order; (ii) whether or not it is an order for standard option classes in the Penny Interval Program³ (“Penny classes”) or an order for standard option classes which are not in the Penny Interval Program (“Non-Penny classes”) (or other explicitly identified classes); and (iii) to which away market it is being routed. This assessment practice is identical to the routing fees assessment practice currently utilized by the Exchange’s affiliates, Miami International Securities Exchange, LLC (“MIAX Options”) and MIAX PEARL, LLC (“MIAX Pearl”). This is also similar to the methodology utilized by the Cboe BZX Exchange, Inc. (“Cboe BZX Options”), a competing

³ See Exchange Rule 510(c).

options exchange, in assessing routing fees. Cboe BZX Options has exchange groupings in its fee schedule, similar to those of the Exchange, whereby several exchanges are grouped into the same category dependent upon the order's origin type and whether it is a Penny or Non-Penny class.⁴

As a result of conducting a periodic review of the current transaction fees charged by away markets, the Exchange has determined to amend the exchange groupings of options exchanges within the routing fee table, and to add another fee tier, to account for fees assessed at away markets and to better reflect the associated costs and fees of routing customer orders to certain away markets for execution.

Proposal

The Exchange proposes to amend the table in Section 1)b) of the Exchange's Fee Schedule, Fees for Customer Orders Routed to Another Options Exchange.

The purpose of the proposed change is to adjust the routing fee groups for orders routed to other exchanges to better reflect the associated costs for that routed execution in Penny and Non-Penny Classes as determined by the fees assessed at the executing exchange. In determining to amend its routing fees the Exchange took into account transaction fees assessed by the away market to which the Exchange routes orders, as well as the Exchange's clearing costs, administrative, regulatory, and technical costs associated with routing orders to an away market. The Exchange uses unaffiliated routing brokers to route orders to the away markets; the costs associated with the use of these services are included in the routing fees specified in the Fee Schedule. This routing fee structure is not only similar to the Exchange's affiliates, MIAX Options and MIAX Pearl, but is also comparable to the structure in place on at least one other

⁴ See Cboe U.S. Options Fee Schedules, BZX Options, effective March 1, 2024, "Fee Codes and Associated Fees," at https://www.cboe.com/us/options/membership/fee_schedule/bzx/.

competing options exchange, Cboe BZX Options.⁵ The Exchange’s routing fee structure approximates the Exchange’s costs associated with routing orders to away markets. The per-contract transaction fee amount associated with each grouping closely approximates the Exchange’s all-in cost (plus an additional, non-material amount)⁶ to execute that corresponding contract at that corresponding exchange.

Specifically, the Exchange proposes to amend the “Routed, Priority Customer, Penny Program” \$0.15 fee tier and the “Routed, Priority Customer, Penny Program” \$0.30 fee tier to segregate routing fees for SPY orders executed on Nasdaq MRX. Currently, the Exchange assesses a \$0.30 fee for any Priority Customer order in a Penny Program symbol, routed to Nasdaq MRX. The Exchange now proposes to amend the “Routed, Priority Customer, Penny Program” \$0.15 fee tier to include Nasdaq MRX (SPY Only) and to amend the “Routed Priority Customer, Penny Program” \$0.30 fee tier to amend Nasdaq MRX to Nasdaq MRX (except SPY). This change is being made as Nasdaq MRX assesses a \$0.20 per contract taker fee for Priority Customer orders in Penny Program symbols,⁷ but does not assess a taker fee for Priority Customer SPY orders.⁸ The proposed changes to the Exchange’s fee schedule better reflect the taker fees charged by Nasdaq MRX for Priority Customer SPY orders.

⁵ See supra note 4. The Cboe BZX Options fee schedule has exchange groupings, whereby several exchanges are grouped into the same category, dependent on the order’s Origin type and whether it is a Penny or Non-Penny class. For example, Cboe BZX Options fee code RR covers routed customer orders in Non-Penny classes to NYSE Arca, Nasdaq BX, Cboe C2, Nasdaq ISE, Nasdaq Gemini, MIAX Emerald, MIAX Pearl, NOM, or MEMX with a single fee of \$1.25 per contract.

⁶ This amount is to cover de minimis differences/changes to away market fees (i.e., minor increases or decreases) that would not necessitate a fee filing by the Exchange to re-categorize the away exchange into a different grouping. Routing fees are not intended to be a profit center for the Exchange and the Exchange’s goal regarding routing fees and expenses is to be as close as possible to net neutral.

⁷ See Nasdaq MRX Rules, Options 7, Pricing Schedule, Section 3, Regular Order Fees and Rebates, Table 1. The Exchange notes that on March 1, 2024, Nasdaq MRX increased the taker fee from \$0.15 to \$0.20 for Priority Customer orders in penny classes and increased the taker fee to \$0.40 for Priority Customer orders in non-penny classes.

⁸ See footnote 6 of Nasdaq MRX Rules, Options 7, Pricing Schedule, Section 3, Regular Order Fees and Rebates, which provides, “Market Maker Tier 1 through Tier 4 Maker Fees/Rebates and Priority Customer

Additionally, the Exchange proposes to similarly segregate Routed, Priority Customer SPY orders to the BOX Exchange (“BOX”). Specifically, the Exchange proposes to amend the “Routed, Priority Customer, Penny Program” \$0.15 fee tier to specify that orders in this segment routed to BOX will be assessed a \$0.15 fee except for SPY orders. Additionally, the Exchange proposes to amend the “Routed, Priority Customer, Penny Program” \$0.30 fee tier to specify that SPY orders in this segment routed to BOX will be assessed a \$0.30 fee. This change is being made as BOX does not assess a taker fee for Professional Customer orders in any Penny or Non-Penny classes⁹ except for SPY orders where BOX assesses a \$0.10 per contract taker fee.¹⁰ The proposed changes are being made to better reflect the costs and fees associated with executing Priority Customer SPY orders on BOX.¹¹

The Exchange proposes to amend the “Routed, Priority Customer, Non-Penny Program” \$0.15 fee tier to remove Nasdaq ISE and to amend the “Routed, Priority Customer, Non-Penny Program” \$1.00 fee tier to add Nasdaq ISE. This proposed change reflects fees charged by Nasdaq ISE when a Priority Customer trades against a Priority Customer.¹² This change is being made to better reflect the costs and fees associated with executing orders in this segment on Nasdaq ISE.

Tier 1 through Tier 4 Taker Fees will be \$0.00 per contract, in Penny Symbols, for the following options symbols: SPY, QQQ and IWM. See also Securities Exchange Release No. 98129 (August 14, 2023), 88 FR 56672 (August 18, 2023) (SR-MRX-2023-12).

⁹ See BOX Exchange Fee Schedule, Section IV, Electronic Transaction Fees, A, Non-Auction Transactions.

¹⁰ See id.

¹¹ BOX Exchange charges a \$0.10 Taker fee for executions against Professional Customers / Broker Dealers, and Market Makers. See BOX Exchange Fee Schedule as of January 2, 2024, Section IV. Electronic Transaction Fees, A. Non-Auction Transactions, available online at <https://boxoptions.com/fee-schedule/>.

¹² See Nasdaq ISE Rules, Options 7 Pricing Schedule, Section 3. Regular Order Fees and Rebates, footnote 3 which provides in pertinent part that, “Priority Customer orders will be charged a taker fee of \$1.00 per contract for trades executed against a Priority Customer.”

The Exchange proposes to amend the “Routed, Public Customer that is not a Priority Customer, Non-Penny Program” \$1.15 fee tier to remove NOM and Nasdaq ISE. The Exchange proposes to amend the “Routed, Public Customer that is not a Priority Customer, Non-Penny Program” \$1.00 fee tier to add NOM.¹³ This change is being made to better reflect the associated costs and fees of routing these customer orders to certain away markets for execution.

The Exchange proposes to amend the “Routed, Public Customer that is not a Priority Customer, Non-Penny Program” \$1.25 fee tier to remove Cboe BZX Options and Nasdaq BX Options. The Exchange now proposes to adopt a new “Routed, Public Customer that is not a Priority Customer, Non-Penny Program” \$1.40 fee tier to include Nasdaq ISE, Cboe BZX Options, and Nasdaq BX Options. This change is being made to better reflect the fees assessed for executions that occur on Cboe BZX Options,¹⁴ Nasdaq ISE,¹⁵ and Nasdaq BX Options¹⁶ and the associated costs of routing customer orders to these away markets for execution.

As discussed above the Exchange uses unaffiliated routing brokers to route orders to the away markets; the costs associated with the use of these services are included in the routing fees specified in the Fee Schedule. The per-contract transaction fee amount associated with each grouping, including the proposed “Routed, Public Customer that is not a Priority Customer, Non-

¹³ NOM assesses an \$0.85 taker fee for Customer and Professional orders in Non-Penny classes. See Nasdaq Stock Market Rules, Options 7, Pricing Schedule, Section 2, Nasdaq Options Market –Fees and Rebates, Fees to Remove Liquidity in Penny and Non-Penny Symbols.

¹⁴ See Cboe U.S. Options Fee Schedules, BZX Options, effective March 1, 2024, “Fee Codes and Associated Fees,” which assesses a \$1.15 fee for Non-Customer orders, and an \$0.85 fee for Customer orders, that remove liquidity in Non-Penny classes, available online at https://www.cboe.com/us/options/membership/fee_schedule/bzx/.

¹⁵ See Nasdaq ISE Rules, Options 7 Pricing Schedule, Section 3, Regular Order Fees and Rebates, footnote 3 which provides in pertinent part that, “Non-Priority Customer orders will be charged a taker fee of \$1.25 per contract for trades executed against a Priority Customer.” See also Securities Exchange Act Release No. 99024 (November 28, 2023), 88 FR 84014 (December 1, 2023) (SR-ISE-2023-28).

¹⁶ See Nasdaq BX Rules, Options 7 Pricing Schedule, Section 2, BX Options Market-Fees and Rebates, paragraph (1) Fees and Rebates for Execution of Contracts on the BX Options Markets, which assesses a \$1.25 Taker Fee for Non-Penny Symbols. See also Securities Exchange Act Release No. 99008 (November 21, 2023), 88 FR 83189 (November 28, 2023) (SR-BX-2023-31).

Penny Program” \$1.40 fee tier closely approximates the Exchange’s all-in cost (plus an additional, non-material amount)¹⁷ to execute that corresponding contract at that corresponding exchange.

The Exchange notes that in determining whether to adjust certain groupings of options exchanges in the routing fee table, the Exchange considered the transaction fees assessed by away markets, and determined to amend the grouping of exchanges that assess transaction fees for routed orders within a similar range. This same logic and structure applies to all of the groupings in the routing fee table. By utilizing the same structure that is utilized by the Exchange’s affiliates, MIAX Options and MIAX Pearl, the Exchange’s Members¹⁸ will be assessed routing fees in a similar manner. The Exchange believes that this structure will minimize any confusion as to the method of assessing routing fees between the three exchanges. The Exchange notes that its affiliates, MIAX Options and MIAX Pearl, will file to make the same proposed routing fee changes contained herein.

Implementation

The proposed rule changes are immediately effective.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act¹⁹ in general, and furthers the objectives of Section 6(b)(4) of the Act²⁰ in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The Exchange also believes the

¹⁷ See supra note 6.

¹⁸ 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.

¹⁹ 15 U.S.C. 78f(b).

²⁰ 15 U.S.C. 78f(b)(4).

proposal furthers the objectives of Section 6(b)(5) of the Act²¹ 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 the proposed change to the exchange groupings of options exchanges within the routing fee table furthers the objectives of Section 6(b)(4) of the Act and is reasonable, equitable and not unfairly discriminatory because the proposed change will continue to apply in the same manner to all Members that are subject to routing fees. The Exchange believes the proposed change to the routing fee table exchange groupings furthers the objectives of Section 6(b)(5) of the Act and is designed to promote just and equitable principles of trade and is not unfairly discriminatory because the proposed change seeks to recoup costs that are incurred by the Exchange when routing Priority and Public Customer Orders to away markets on behalf of Members and does so in the same manner for all Members that are subject to routing fees. The costs to the Exchange to route orders to away markets for execution primarily includes transaction fees assessed by the away markets to which the Exchange routes orders, in addition to the Exchange's clearing costs, administrative, regulatory and technical costs. The Exchange believes that the proposed re-categorization of certain exchange groupings and the introduction of an additional fee tier would enable the Exchange to better reflect the costs it and fees associated with routing orders to other exchanges for execution. Further, the new proposed fee

²¹ 15 U.S.C. 78f(b)(5).

tier is in line with at least one other exchange that assesses a fee to similarly route customer orders for Non-Penny Classes to away markets for execution.²²

The Exchange places away markets in the fee tier grouping that best approximates the Exchange's costs and fees to route the orders in that segment to that away market. The per-contract transaction fee amount associated with each grouping approximates the Exchange's all-in cost (plus an additional, non-material amount)²³ to execute the corresponding contract at the corresponding exchange. Other exchanges employ more simplistic models that provide for even fewer tiers than the Exchange (e.g., two tiers on MEMX,²⁴ and five tiers on Cboe BZX)²⁵ in their attempt to reflect the costs and fees associated with routing and executing orders on other exchanges. The Exchange believes its tier structure represents the best approach to reflect the costs and fees associated with routing and executing orders on other exchanges.

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. The Exchange's proposed re-categorization of certain exchange groupings is intended to enable the

²² See C2 Options Fee Schedule, as of February 9, 2024, Linkage Routing Fees, which assesses a \$1.55 fee for orders marked with fee code "RD" Routed (Customer), Non-Penny. The term "Customer" means a Public Customer or a broker-dealer. See Rules of Cboe C2 Exchange, Rule 1.1. "Public Customer" means a person that is not a broker or dealer in securities. See Rules of Cboe C2 Exchange, Rule 1.1. The Exchange similarly defines "Public Customer" as a person that is not a broker or dealer in securities. See Exchange Rule 100.

²³ See *supra* note 6.

²⁴ See MEMX Options Fee Schedule, as of February 15, 2024, Routing Fees, which assesses a fee of \$0.60 for orders in penny classes routed to other exchanges and \$1.20 for orders in non-penny classes routed to other exchanges, available at <https://info.memxtrading.com/us-options-trading-resources/us-options-fee-schedule/>.

²⁵ See Cboe BZX Options Fee Schedule, as of March 1, 2024, Fee Codes and Associated Fees, which assesses a \$0.90 fee for non-customer orders in penny classes routed to other exchanges and a \$1.25 fee for non-customer orders in non-penny classes routed to other exchanges, and additionally provides for three additional fee tiers for customer orders routed to other exchanges, available at https://www.cboe.com/us/options/membership/fee_schedule/bzx/.

Exchange to recover the costs it incurs to route orders to away markets, while the introduction of a new fee tier is designed to allow the Exchange to better approximate the costs it incurs to route orders to Cboe BZX Options, Nasdaq ISE, and Nasdaq BX. The costs to the Exchange to route orders to away markets for execution primarily includes the transaction fees assessed by the away markets to which the Exchange routes orders, in addition to the Exchange's clearing costs, administrative, regulatory and technical costs. This new tier is reflective of the fees assessed on the away markets and the Exchange's cost to route orders to these away markets on behalf of Members. The Exchange does not believe that this proposal imposes any unnecessary burden on competition because it seeks to better reflect the costs and fees incurred by the Exchange when routing orders to away markets on behalf of Members and notes that at least one other options exchange has a similar routing fee structure.²⁶

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,²⁷ and Rule 19b-4(f)(2)²⁸ 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

²⁶ See supra note 4.

²⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

²⁸ 17 CFR 240.19b-4(f)(2).

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-2024-10 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-2024-10. 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-2024-10 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.²⁹

Sherry R. Haywood,

Assistant Secretary.

²⁹ 17 CFR 200.30-3(a)(12).