



8011-01

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85224; File No. SR-EMERALD-2019-08]

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Exchange Rule 503, Openings on the Exchange, and Rule 515, Execution of Orders and Quotes, In Order To Harmonize Its Rule To the Rules of MIAX Options

February 28, 2019

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 February 22, 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 503, Openings on the Exchange, and MIAX Emerald Rule 515, Execution of Orders and Quotes, in order to harmonize its rule to the rules of MIAX Options.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 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 503, Openings on the Exchange, and MIAX Emerald Rule 515, Execution of Orders and Quotes, 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 Act³ on March 1, 2019. As described more fully in MIAX

³ 15 U.S.C. 78f.

Emerald’s Form 1 application,⁴ 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. MIAX Options has filed a proposed rule change to amend MIAX Options Rule 503, Openings on the Exchange, and MIAX Options Rule 515, Execution of Orders and Quotes.⁵ 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 Exchange Rule 503, Openings on the Exchange, and Exchange Rule 515, Execution of Orders and Quotes, to delete certain rule text regarding functionality that the Exchange proposes to remove from the System⁶ and to make certain minor clarifying changes related thereto. These changes would make MIAX Emerald Rule 503 and Rule 515 consistent with MIAX Options Rule 503 and Rule 515 and are identical to changes made by MIAX Options when it modified its rule.⁷

⁴ 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).

⁵ See SR-MIAX-2019-06 filed on February 22, 2019 to amend Exchange Rule 503, Openings on the Exchange, and Exchange Rule 515, Execution of Orders and Quotes, to delete certain rule text regarding functionality that the Exchange proposes to remove from the System.

⁶ The term “System” means the automated trading system used by the Exchange for the trading of securities. See Exchange Rule 100.

⁷ See supra note 5.

First, the Exchange proposes to delete Exchange Rule 515, Interpretations and Policies .01. Presently, this rule states that “[r]esubmission of Orders. A Member⁸ may submit written instructions to the Exchange designating orders the Member submits as eligible for automatic resubmission when the order or any remaining part of the order has been automatically cancelled by the System. The resubmitted order will be automatically submitted as a new order. This automatic resubmission functionality of the System will not apply to Immediate-or-Cancel, Fill-or-Kill or Intermarket Sweep Orders.” The Exchange notes that this functionality was completely voluntary for Members to use on MIAX Options and was intended to provide Members with an automated way to resubmit certain cancelled orders. The Exchange believes this functionality is no longer necessary as very few Members on MIAX Options ever used such functionality, and no Members on MIAX Options are currently utilizing this functionality. Therefore, the Exchange proposes to delete this rule text as it believes no Member of MIAX Emerald would ever utilize this functionality because all Members of MIAX Emerald are currently also Members of MIAX Options.

Second, the Exchange proposes to amend Exchange Rule 515(e) related to handling of Immediate-or-Cancel (“IOC”) Orders. Specifically, the Exchange proposes to delete the last sentence of Rule 515(e) which currently states that “[c]ontracts remaining from an IOC order will not be eligible for automatic resubmissions as a new order for Members who have instructed the Exchange in writing to re-enter remaining contracts.” The Exchange notes that, since it is proposing to delete the order resubmission functionality, this corresponding rule text is no longer

⁸ 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.

necessary because it was intended as a carve-out for IOC orders from the functionality the Exchange now proposes to delete from Interpretations and Policies .01.

Third, the Exchange proposes to amend Exchange Rule 515(f) related to handling of Fill-or-Kill (“FOK”) Orders. Specifically, the Exchange proposes to delete the last sentence of Rule 515(f) which currently states that “[a]n FOK order will not be eligible for automatic resubmissions as a new order for Members who have instructed the Exchange in writing to re-enter remaining contracts.” Similarly, this corresponding rule text is no longer necessary because it was intended as a carve-out for FOK orders from the functionality the Exchange now proposes to delete from Interpretations and Policies .01.

Fourth, the Exchange proposes to amend Exchange Rule 515(g) related to handling of Intermarket Sweep Orders and Intermarket Sweep eQuote (“ISOs”). Specifically, the Exchange proposes to delete part of the last sentence of Rule 515(g) which currently states that “...and are not eligible for automatic resubmissions as a new order for Members who have instructed the Exchange in writing to re-enter remaining contracts.” Similarly, this corresponding rule text is no longer necessary because it was intended as a carve-out for ISOs from the functionality the Exchange now proposes to delete from Interpretations and Policies .01.

Finally, the Exchange proposes to amend Exchange Rule 503(f)(2)(vii)(B)(5) to delete a sentence related to the automatic resubmission of new orders as part of the opening process. Specifically, the Exchange proposes to delete text which reads “...unless the Member that submitted the original order has instructed the Exchange in writing to re-enter the remaining size, in which case the remaining size will be automatically submitted as a new order...” The Exchange notes that this functionality was completely voluntary for Members of MIAX Options to use and was intended to provide Members of MIAX Options with an automated way to

resubmit certain cancelled orders. The Exchange believes this functionality is no longer necessary as very few Members of MIAX Options ever used such functionality, and the Exchange believes no Members of MIAX Emerald would ever utilize this functionality because all Members of MIAX Emerald are currently also Members of MIAX Options. Therefore, the Exchange proposes to delete this rule text as it no longer offers this functionality to MIAX Options Members,⁹ and does not intend to offer this functionality to MIAX Emerald Members. The Exchange believes that the proposed changes will provide greater clarity to Members and the public regarding the Exchange's Rules, and it is in the public interest for rules to be accurate and concise so as to minimize the potential for confusion.

The proposed changes are scheduled to become operative March 1, 2019.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act¹⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act¹¹ in particular, in that it is 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 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 the proposed changes promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed rule change deletes rule text that relates to

⁹ See supra note 5.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

voluntary functionality that the Exchange believes no Member would ever utilize and updates corresponding rules to remove carve-outs which would no longer be applicable, to provide uniformity in the Exchange's rulebook with respect to System functionality. The Exchange notes that the proposed changes to Exchange Rule 515, Execution of Orders and Quotes, and Exchange Rule 503, Openings on the Exchange, would not have a substantive impact on Exchange Members since the Exchange believes no Members would ever utilize such functionality because all Members of MIAX Emerald are currently also Members of MIAX Options. As such, the proposed amendments would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national exchange system, since it is proposing to remove rule text that relates to functionality that would not be used by its Members. The Exchange further believes that the proposed rule change is consistent with the Act because Members will have other means of submitting orders and the removal of the automatic order resubmission functionality would not impact the ability of Members to transact on the Exchange. The Exchange does not believe that removing this functionality will negatively impact Members because very few MIAX Options Members ever used such functionality, and the Exchange believes no MIAX Emerald Members would ever utilize this functionality because all Members of MIAX Emerald are currently also Members of MIAX Options.

Additionally, the Exchange believes the proposed changes promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system because they seek to add additional clarity to, and improve the accuracy of, the Exchange's rules. In particular, the Exchange believes that the proposed rule changes will provide clarity and transparency of the Exchange's rules to Members and the public

because it would delete rule text related to voluntary functionality that is no longer available on MIAX Options¹² and would not be available on MIAX Emerald, and it is in the public interest for rules to be accurate and concise so as to minimize the potential for confusion.

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 not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change will have no impact on competition as it is not designed to address any competitive issues but rather is designed to delete rule text that relates to voluntary functionality that is no longer used by Members of MIAX Options and that the Exchange believes would never be utilized by Members of MIAX Emerald because all Members of MIAX Emerald are currently also Members of MIAX Options, and updates corresponding rules to remove carve-outs which would no longer be applicable as a result. The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition as the Rules apply equally to all Exchange Members.

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

¹² See supra note 5.

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 Act¹³ and Rule 19b-4(f)(6)¹⁴ thereunder.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days from the date of filing. However, Rule 19b-4(f)(6)(iii)¹⁵ permits the Commission to 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 waive the 30-day operative delay. The Exchange seeks to make the voluntary functionality contained in Exchange Rule 515, Execution of Orders and Quotes, and Exchange Rule 503, Openings on the Exchange no longer available on March 1, 2019. The Commission believes that the waiver of the 30-day operative delay is consistent with the protection of investors and the public interest and hereby waives the 30-day operative delay and designates the proposal operative on March 1, 2019.¹⁶

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

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 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.

¹⁵ 17 CFR 240.19b-4(f)(6)(iii).

¹⁶ 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).

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
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-EMERALD-2019-08 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-2019-08. 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-2019-08 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.¹⁷

Eduardo A. Aleman,

Deputy Secretary.

¹⁷ 17 CFR 200.30-3(a)(12).

