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SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-92360; File No. SR-EMERALD-2021-22)

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

July 9, 2021.

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 July 1, 2021, 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 Exchange's Fee Schedule (the "Fee Schedule") to amend the fees for Purge Ports.[3]

The text of the proposed rule change is available on the Exchange's website at http://www.miaxoptions.com/rule-filings/emerald, 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 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.

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 See Fee Schedule, Section 5)d)ii).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently provides Market Makers[4] the option to purchase Purge Ports to assist in their quoting activity. Purge Ports provide Market Makers with the ability to send quote 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.

The Exchange proposes to amend the monthly fee for Purge Ports under Section 5)d)ii) of the Fee Schedule. Unlike other options exchanges that provide purge port functionality and charge fees on a per port basis,[6] the Exchange offers Purge Ports as a package and provides Market Makers with the option to receive up to two (2) Purge Ports per matching engine[7] to which it connects via a Full Service MEI Port.[8] The Exchange currently has twelve (12)

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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. ("BZX") 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). In Cboe's Purge Ports Frequently Asked Questions, Cboe recommends that at least two purge ports be obtained per exchange for redundancy purposes. See https://cdn.cboe.com/resources/features/Cboe_USO_PurgePortsFAQs.pdf. 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.

7 "Matching Engine" means a part of the MIAX Emerald electronic system that processes options orders and trades on a symbol-by-symbol basis. Some Matching Engines will process option classes with multiple root symbols, and other Matching Engines may be dedicated to one single option root symbol. A particular root symbol may only be assigned to a single designated Matching Engine. A particular root symbol may not be assigned to multiple Matching Engines. See Fee Schedule, Definitions.

8 Full Service MEI Ports provide Market Makers with the ability to send Market Maker simple and complex quotes, eQuotes, and quote purge messages to the MIAX Emerald

matching engines which means Market Makers may receive up to twenty-four (24) Purge Ports for a single monthly fee. The Exchange currently assesses Market Makers a fee of $1,500 per month, regardless of the number of Purge Ports allocated to the Market Maker. Assuming a Market Maker connects to all twelve (12) matching engines during a month, with two Purge Ports per matching engine, this results in a cost of $62.50 per Purge Port ($1,500 divided by 24) for the month. The Exchange now proposes to increase the fee to $7,500 per month. Market Makers will continue to receive two (2) Purge Ports to each matching engine to which they are connected for the single flat monthly fee. Assuming a Market Maker connects to all twelve (12) matching engines during the month, with two Purge Ports per matching engine, this would result in a cost of $312.50 per Purge Port ($7,500 divided by 24).

The Exchange has historically undercharged for Purge Port as compared to other options exchanges[9] because the Exchange provides Purge Ports as a package for a single monthly fee. As described above, this package includes two Purge Ports for each of the Exchange's twelve (12) matching engines. The Exchange understands other options exchanges charge fees on a per port basis. The proposed monthly fee increase for Purge Ports would bring the Exchange's fees more in line with that of other options exchanges, while maintaining a competitive fee structure for Purge Port.

Implementation Date

The proposed fee changes will become effective on July 1, 2021.

2. Statutory Basis

System. Full Service MEI Ports are also capable of receiving administrative information. Market Makers are limited to two Full Service MEI Ports per Matching Engine. See Fee Schedule, Definitions.

[9] See supra note 6.

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[10] in general, and furthers the objectives of Section 6(b)(4) of the Act[11] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among Exchange Members and issuers and other persons using any facility or system which the Exchange operates or controls. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act[12] 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 that the proposed fees are reasonable, equitably allocated and not unfairly discriminatory because, for the flat fee, the Exchange provides each Market Maker two Purge Ports for each matching engine to which that Market Maker is connected. The Exchange currently has twelve (12) matching engines. Accordingly, each Market Maker that is connected to all twelve (12) matching engines receives a total of twenty-four (24) Purge Ports for the existing flat fee of $1,500 per month. On a per Purge Port basis, that equals $62.50 per Purge Port ($1,500 divided by 24). The Exchange believes that increasing the flat monthly fee for Purge Port (regardless of the number of matching engines to which it connects and consequently regardless of the number of Purge Ports allocated to the Market Maker) is equitable, reasonable, and competitive with the fees charged by other exchanges that offer comparable purge port services. The Exchange believes that most such exchanges charge per port for each match engine. For example, BXZ charges a monthly fee of $750 per purge port per month, EDGX charges a monthly fee of $750 per purge port, Cboe charges a monthly fee of $850 per purge

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10 15 U.S.C. 78f(b).

11 15 U.S.C. 78f(b)(4).

12 15 U.S.C. 78f(b)(5).

port,[13] and Nasdaq GEMX assesses its members $1,250 per SQF Purge Port per month.[14] When calculated on a per purge port basis, each of the above exchanges charge monthly per purge port fees that are higher than the proposed $7,500 per month ($312.50 per Purge Port).

The Exchange operates in a highly competitive environment. Indeed, there are currently 16 registered options exchanges that trade options. Based on publicly available information, no single options exchange has more than 15% of the market share and currently the Exchange represents only approximately 3.27% of the market share.[15] The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Particularly, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."[16] The Exchange is not aware of any evidence that a market share of approximately 6-7% provides the Exchange with anti-competitive pricing power. If the Exchange were to attempt to establish unreasonable pricing, then no market participant would purchase Purge Ports, and existing market participants would cease paying for Purge Ports, which are optional services offered by the Exchange. The Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[17] in that it provides for the equitable allocation of reasonable dues, fees and other charges among Members and other persons using

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13 See supra note 6. Cboe further recommends that at least two purge ports be obtained per exchange for redundancy purposes. See https://cdn.cboe.com/resources/features/Cboe_USO_PurgePortsFAQs.pdf. This guidance applies to Cboe's affiliate exchanges, BZX and EDGX.

14 See supra note 6.

15 See the Exchange's "The Market at a Glance", available at https://www.miaxoptions.com/ (last visited June 30, 2021).

16 See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) ("Regulation NMS Adopting Release").

17 15 U.S.C. 78f(b)(4).

any facility or system which the Exchange operates or controls because Purge Ports are optional functionality offered to Market Makers. The Exchange further believes the proposed fees are reasonable as the Exchange believes that the proposed fees are lower on a per port basis than the fees assessed by other exchanges that provide similar functionality.[18] Indeed, if the Exchange's proposed fees that are excessively higher than established fees for similar services on other exchanges, then the proposed fees would simply serve to reduce demand for the Exchange's services, which as noted, is entirely optional. The Exchange notes that Market Makers are not required by rule or regulation to purchase Purge Ports. It is entirely a business decision of each Market Maker that determines to purchase Purge Ports.

Additionally, Market Makers are not precluded from using the purge messages provided by either the MEI protocol or the cancel messages provided by the FIX protocol. Under the MEI protocol, Market Makers may request that all quotations for all underlyings, or for a specific underlying, be removed, and that new inbound quotations for all underlyings, or specific underlyings, be blocked. Under the FIX protocol, Electronic Exchange Members ("EEMs") may also request that all, or a subset, of orders for an MPID, or all Day or GTC orders for an MPID, on the requesting session, be canceled. As such, a dedicated Purge Port is not required or necessary. Rather, Purge Ports were specially developed as an optional service to further assist firms in effectively managing risk.

The Exchange operates in a highly competitive market in which exchanges offer various types of access services as a means to facilitate the trading activities of Members and other participants. As Purge Ports provide voluntary risk management functionality, excessive fees would simply serve to reduce demand for this optional product. The Exchange also believes that the proposed Purge Port fees are not unfairly discriminatory because they will apply uniformly to all Market Makers that choose to use dedicated Purge Ports. Purge Ports are completely

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[18] See supra note 6.

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 the Purge Port service will be charged the same amount for the same respective services.

As Purge Ports are only available for purging and not for activities such as order or quote entry, the Purge Ports are not designed to permit unfair discrimination but rather are designed to enable Market Makers to manage their quoting risk and meet their heightened quoting obligations that other market participants are not subject to, which, in turn, benefits all market participants. The Exchange believes the proposed fee increase will continue to encourage better use of dedicated Purge 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. The Exchange also believes that the proposed fee increase is non-discriminatory because the proposed Purge Port fees will apply uniformly to all Market Makers. Purge Ports are completely voluntary and no Market Maker is required or under any regulatory obligation to utilize them. All Market Makers that voluntarily request this service will be charged the same amount for the same service. Separately, the Exchange is not aware of any reason why market participants could not simply drop their Purge Ports if the Exchange were to establish unreasonable prices for its Purge Ports that, in the determination of such market participant, did not make business or economic sense for such market participant. No options market participant is required by rule, regulation, or competitive forces to utilize Purge Ports. As evidence of the fact that market participants can and do drop their access to exchanges based on non-transaction fee pricing, R2G Services LLC ("R2G") filed a comment letter after BOX's proposed rule changes to increase its connectivity fees (SR-BOX-2018-24, SR-BOX-2018-37, and SR-BOX-2019-04). The R2G Letter stated, "[w]hen BOX instituted a $10,000/month price increase for connectivity; we had no choice but to terminate connectivity into them as well as terminate our market data relationship. The cost benefit analysis just didn't make any sense for us at those new levels." Similarly, the Exchange

noted in a recent filing that once it issued a notice that it was adopting Trading Permit fees, among other non-transaction fees, one Member dropped its access to the Exchange as a result of those fees.[19] Accordingly, these examples show that if an exchange sets too high of a fee for non-transaction fees for its relevant marketplace, market participants can choose to no longer access that particular 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 that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange believes the proposed rule change does not impose any burden intra-market competition because the use of Purge Ports is an optional service offered by the Exchange and no Market Maker is required or under any regulatory obligation to utilize them. The Exchange offers Purge Ports as a package and provides Market Makers with the option to receive up to two (2) Purge Ports per matching engine to which it connects via a Full Service MEI Port. The Exchange currently has twelve (12) matching engines which means Market Makers may receive up to twenty-four (48) Purge Ports for a single monthly fee. The Exchange does not believe that the proposed change represents a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors. Additionally, Market Makers may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed change will impair the ability of Market Makers or competing venues to maintain their competitive standing in the financial markets.

The Exchange believes that fees for the proposed Purge Ports and connectivity, in general, are constrained by the robust competition for order flow among exchanges and non-exchange markets. Further, excessive fees for connectivity, including Purge Port fees, would

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[19] See Securities Exchange Act Release No. 91033 (February 1, 2021), 86 FR 8455 (February 5, 2021) (SR-EMERALD-2021-03).

serve to impair an exchange's ability to compete for order flow rather than burdening competition. The Exchange also does not believe the proposed rule change would impact intramarket competition as it would apply to all Market Makers equally.

The Exchange also does not believe that the proposed rule change will result in any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive environment, and as discussed above, its ability to price access and ports is constrained by competition among exchanges and third parties. There are 15 other U.S. options exchanges, which the Exchange must consider in its pricing discipline in order to compete for market participants. In this competitive environment, market participants are free to choose which competing exchange to use to satisfy their business needs. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges. Accordingly, the Exchange does not believe its proposed fee changes impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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,[20] and Rule 19b-4(f)(2)[21] 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

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[20] 15 U.S.C. 78s(b)(3)(A)(ii).

[21] 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 (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-EMERALD-2021-22 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-2021-22. 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-2021-22 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.[22]

J. Matthew DeLesDernier,
Assistant Secretary.

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[22] 17 CFR 200.30-3(a)(12).