

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-85457; File No. SR-EMERALD-2019-16)

March 29, 2019

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Exchange Rule 510, Minimum Price Variations and Minimum Trading Increments

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 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 510, Minimum Price Variations and Minimum Trading Increments, to specify that replacement classes may be added to the Penny Pilot Program on a quarterly basis, without altering the expiration date of the Penny Pilot Program, which is June 30, 2019.³

The text of the proposed rule change is available on the Exchange’s website at <http://www.miaxoptions.com/rule-filings/emerald> at MIAX Emerald’s principal office, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 85225 (March 1, 2019), 84 FR 8353 (March 7, 2019) (SR-EMERALD-2019-06).

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 Rule 510, Minimum Price Variations and Minimum Trading Increments, Interpretations and Policies .01, regarding the Penny Pilot Program, to specify that replacement classes may be added to the Penny Pilot Program on a quarterly basis, without altering the expiration date of the Penny Pilot Program, which is June 30, 2019.

The Exchange recently filed to extend the Penny Pilot Program until June 30, 2019 (from December 31, 2018) and also updated the rule text to delete the sentence regarding replacement classes being added to the Penny Pilot Program on the second trading day following July 1, 2018. At that time, the Exchange noted that the deletion would create a difference between the rule text of MIAX Emerald and that of the Exchange's affiliates, Miami International Securities Exchange, LLC and MIAX PEARL, LLC, however, in practice there would be no difference as the second trading day following January 1, 2019 had already passed.⁴ The Exchange now proposes to adopt a new sentence to the rule text about when replacement classes may be added to the Penny Pilot Program. Specifically, the Exchange proposes to add the following sentence after the last sentence of Exchange Rule 510, Interpretations and Policies .01: "The replacement

⁴ See id.

classes may be added to the penny pilot on the second trading day in the first month of each quarter.”

Exchange Rule 510 currently authorizes the Exchange to replace any option classes in the Penny Pilot Program that have been delisted with the next most actively traded multiply listed option classes that are not yet included in the Penny Pilot Program, based on trading activity in the previous six months.⁵ The Exchange now proposes to modify Rule 510, Minimum Price Variations and Minimum Trading Increments, Interpretations and Policies .01, to allow the Exchange to add replacement classes (for Penny Pilot Program classes that have been delisted) on a quarterly basis. With this proposal, the Exchange would add eligible replacement classes in April, July, October of 2019, and then in January of 2020 and each subsequent quarter. The Exchange believes this change would allow the Exchange to update option classes eligible for the Penny Pilot Program (by replacing delisted classes) on a quarterly basis and would enable further analysis of the Penny Pilot Program and a determination of how the Penny Pilot Program should be structured in the future.

As is the case today, the Exchange will determine replacement classes based on trading activity in the previous six months (the “six month lookback”) but will not use the month immediately preceding the addition of a replacement to the Penny Pilot Program. Thus, a replacement class to be added on the second trading day following April 1, 2019 would be identified based on The Option Clearing Corporation’s trading volume data from September 1, 2018 through February 28, 2019.⁶ The Exchange believes the six month lookback is appropriate because this time period would help reduce the impact of unusual trading activity as a result of

⁵ See Exchange Rule 510, Interpretations and Policies .01.

⁶ Exchange Rule 510, Interpretations and Policies .01 continues to obligate the Exchange to announce the replacement classes by a Listings Alert.

unique market events, such as a corporate action (i.e., it would result in a more reliable measure of average daily trading volume than would a shorter period).

This filing does not propose any substantive changes to the Penny Pilot Program: all classes currently participating will remain the same and all minimum increments will remain unchanged. The Exchange believes the benefits to public customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh the increase in quote traffic. In addition, the proposed change would align the Exchange with competing options exchanges that have proposed rules consistent with this proposal.⁷

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act⁹ 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.

⁷ See Securities Exchange Act Release Nos. 85348 (March 18, 2019), 84 FR 10860 (March 22, 2019)(SR-NYSEAMER-2019-05); 85363 (March 19, 2019), (SR-NYSEARCA-2019-13) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Commentary .02 to Rule 6.72-O to specify that replacement issues may be added to the Penny Pilot quarterly)

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁰ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. In particular, the Exchange believes the proposal to allow the addition of replacement classes to the Penny Pilot Program on a quarterly basis would result in a more current list of Penny Pilot Program-eligible classes and would enable further analysis of the Penny Pilot Program, including for a determination of how the Penny Pilot Program should be structured in the future. Further, the Exchange believes the six month lookback is appropriate because this time period would help reduce the impact of unusual trading activity as a result of unique market events, such as a corporate action (i.e., it would result in a more reliable measure of average daily trading volume than would a shorter period). Thus, the Exchange believes this proposal would promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in facilitating transactions in securities, and remove impediments to and perfect the mechanisms of a free and open market and a national market system.

The Exchange notes that it is not making any other substantive changes to the Penny Pilot Program, other than modifying the timing for replacement issues and therefore the Exchange will continue to participate in a program that has been viewed as beneficial to traders, investors and public customers and viewed as successful by the other options exchanges participating in it.

The Exchange believes that the Penny Pilot Program would continue to promote just and equitable principles of trade by enabling public customers and other market participants to express their true prices to buy and sell options to the benefit of all market participants.

¹⁰ Id.

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. Specifically, the Exchange believes that allowing the Exchange to add replacement classes to the Penny Pilot Program on a quarterly basis would make the list of Penny Pilot Program-eligible classes more current and would enable further analysis of the Penny Pilot Program, including for a determination of how the Penny Pilot Program should be structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection. The Penny Pilot Program is an industry-wide initiative supported by all other option exchanges. The Exchange believes that the proposed change would allow for continued competition between Exchange market participants trading similar products as their counterparts on other exchanges, while at the same time allowing the Exchange to continue to compete for order flow with other exchanges in option issues trading as part of the Penny Pilot Program.

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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹¹ and Rule 19b-4(f)(6) thereunder.¹² Because the proposed rule change does not: (i)

¹¹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹² 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.

significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)¹³ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁴ the Commission may 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 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 change will allow the Exchange to add classes to the pilot that are actively traded at the start of the second quarter (i.e., in April 2019) and replace those that have been delisted and are no longer trading on a more frequent basis. This will help ensure that the top 363 most actively traded, multiply-listed classes are included in the Pilot, which will enable further analysis of the Pilot.¹⁵

At any time within 60 days of the filing of such 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

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ 17 CFR 240.19b-4(f)(6)(iii).

¹⁵ For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Commission shall institute proceedings under Section 19(b)(2)(B)¹⁶ of the Act to determine whether the proposed rule change 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](mailto:to-rule-comments@sec.gov). Please include File Number SR-EMERALD-2019-16 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-2019-16. 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 Web site (<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

¹⁶ 15 U.S.C. 78s(b)(2)(B).

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-2019-16 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).