

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-90183; File No. SR-EMERALD-2020-09)

October 14, 2020

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Its Fee Schedule To Adopt Application Programming Interface (“API”) Testing and Certification Fees and Network Connectivity Testing and Certification Fees

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 October 1, 2020, 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 (the “Fee Schedule”) to establish Application Programming Interface (“API”) Testing and Certification fees and Network Connectivity Testing and Certification fees.

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.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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 the Fee Schedule to establish API Testing and Certification fees for Members<sup>3</sup> and non-Members and Network Connectivity Testing and Certification fees for Members and non-Members. MIAX Emerald commenced operations as a national securities exchange registered under Section 6 of the Act<sup>4</sup> on March 1, 2019.<sup>5</sup> The Exchange adopted its transaction fees and certain of its non-transaction fees in its filing SR-EMERALD-2019-15.<sup>6</sup> In that filing, the Exchange expressly waived, among other fees, API Testing and Certification fees and Network Connectivity Testing and Certification fees, both for Members and non-Members, in order to provide an incentive to prospective Members and non-

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<sup>3</sup> “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 and the Definitions section of the Fee Schedule.

<sup>4</sup> 15 U.S.C. 78f.

<sup>5</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).

<sup>6</sup> See Securities Exchange Act Release No. 85393 (March 21, 2019), 84 FR 11599 (March 27, 2019) (SR-EMERALD-2019-15) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish the MIAX Emerald Fee Schedule).

Members to connect to MIAX Emerald as soon as possible. At that time, the Exchange waived API Testing and Certification fees and Network Connectivity Testing and Certification fees for the Waiver Period<sup>7</sup> and stated that it would provide notice to market participants when the Exchange intended to terminate the Waiver Period.

On September 15, 2020, the Exchange issued a Regulatory Circular which announced that the Exchange would terminate the Waiver Period for, among other fees, API Testing and Certification fees and Network Connectivity Testing and Certification fees for Members and non-Members, beginning October 1, 2020.<sup>8</sup>

#### API Testing and Certification Fees for Members

The Exchange proposes to adopt an API Testing and Certification fee for Members. An API makes it possible for Member software to communicate with MIAX Emerald software applications, and is subject to Member testing with, and certification by, MIAX Emerald. API testing and certification includes, for Electronic Exchange Members<sup>9</sup> (“EEMs”), testing all available order types, new order entry, order management, order throughput and mass order

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<sup>7</sup> “Waiver Period” means, for each applicable fee, the period of time from the initial effective date of the MIAX Emerald Fee Schedule until such time that the Exchange has an effective fee filing establishing the applicable fee. The Exchange will issue a Regulatory Circular announcing the establishment of an applicable fee that was subject to a Waiver Period at least fifteen (15) days prior to the termination of the Waiver Period and effective date of any such applicable fee. See the Definitions Section of the Fee Schedule.

<sup>8</sup> See MIAX Emerald Regulatory Circular 2020-41 available at [https://www.miaxoptions.com/sites/default/files/circular-files/MIAX\\_Emerald\\_RC\\_2020\\_41.pdf](https://www.miaxoptions.com/sites/default/files/circular-files/MIAX_Emerald_RC_2020_41.pdf).

<sup>9</sup> “Electronic Exchange Member” or “EEM” means the holder of a Trading Permit who is not a Market Maker. Electronic Exchange Members are deemed “members” under the Exchange Act. See the Definitions section of the Fee Schedule.

cancellation. For Market Makers<sup>10</sup>, API testing and certification also includes testing of all available quote types, quote throughput, quote management and cancellation, Aggregate Risk Manager settings and triggers, and confirmation of quotes within the trading engines.

The API Testing and Certification fees for Members are based upon the type of interface that the Member has been credentialed to use. The Exchange proposes to adopt an API testing and certification fee for EEMs (other than Clearing Firms): (i) initially per API for Financial Information Exchange (“FIX”)<sup>11</sup> ports, FIX Drop Copy (“FXD”)<sup>12</sup> ports and Clearing Trade Drop (“CTD”)<sup>13</sup> ports in the month the EEM has been credentialed to use one or more ports in the production environment for the tested API, and (ii) each time an EEM initiates a change to its system that requires testing and certification. The Exchange proposes to adopt an API testing and certification fee for EEM Clearing Firms (i) initially per API in the month the EEM Clearing

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<sup>10</sup> The term “Market Maker” refers to “Lead Market Maker” (“LMM”), “Primary Lead Market Maker” (“PLMM”) and “Registered Market Maker” (“RMM”), collectively. See Exchange Rule 100. See also the Definitions section of the Fee Schedule.

<sup>11</sup> “FIX Port” means an interface with MIAX Emerald systems that enables the Port user to submit simple and complex orders electronically to MIAX Emerald. See the Definitions section of the Fee Schedule.

<sup>12</sup> The FIX Drop Copy (“FXD”) Port is a messaging interface that will provide a copy of real-time trade execution, trade correction and trade cancellation information to FXD Port users who subscribe to the service. FXD Port users are those users who are designated by an EEM to receive the information and the information is restricted for use by the EEM. FXD Port Fees will be assessed in any month the Member is credentialed to use the FXD Port in the production environment. See Fee Schedule, Section 4)d)iv).

<sup>13</sup> “CTD Port” or “Clearing Trade Drop Port” provides an Exchange Member with a real-time clearing trade updates. The updates include the Member’s clearing trade messages on a low latency, real-time basis. The trade messages are routed to a Member’s connection containing certain information. The information includes, among other things, the following: (i) trade date and time; (ii) symbol information; (iii) trade price/size information; (iv) Member type (for example, and without limitation, Market Maker, Electronic Exchange Member, Broker-Dealer); and (v) Exchange MPID for each side of the transaction, including Clearing Member MPID. See the Definitions section of the Fee Schedule.

Firm has been credentialed to use one or more CTD Ports in the production environment, and (ii) each time an EEM Clearing Firm initiates a change to its system that requires testing and certification.

The Exchange proposes to adopt an API testing and certification fee for Market Makers: (i) initially per API for CTD and MIAX Emerald Express Interface (“MEI”)<sup>14</sup> ports in the month the Market Maker has been credentialed to use one or more ports in the production environment for the tested API and the Market Maker has been assigned to quote in one or more classes, and (ii) each time a Market Maker initiates a change to its system that requires testing and certification. The Exchange also proposes that API Testing and Certification fees will not be assessed in situations where the Exchange initiates a mandatory change to the Exchange’s System<sup>15</sup> that requires testing and certification. The Exchange proposes to assess Member API Testing and Certification fees of \$1,000 for EEMs and \$2,500 for Market Makers. Below is the proposed fee table for API Testing and Certification fees for Members:

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<sup>14</sup> The MEI is a connection to the MIAX Emerald System that enables Market Makers to submit simple and complex electronic quotes to MIAX Emerald. The Exchange offers Full Service MEI Ports, which provide Market Makers with the ability to send Market Maker simple and complex quotes, eQuotes, and quote purge messages to the MIAX Emerald 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. The Exchange also offers Limited Service MEI Ports, which provide Market Makers with the ability to send simple and complex eQuotes and quote purge messages only, but not Market Maker Quotes, to the MIAX Emerald System. Limited Service MEI Ports are also capable of receiving administrative information. Market Makers initially receive two Limited Service MEI Ports per Matching Engine. See the Definitions section of the Fee Schedule.

<sup>15</sup> The term “System” means the automated trading system used by the Exchange for the trading of securities. See Exchange Rule 100.

Type of Member	API Testing and Certification Fee
Electronic Exchange Member	\$1,000.00
Market Maker	\$2,500.00

API Testing and Certification Fee for Non-Members

The Exchange proposes to adopt an API Testing and Certification fee for Third Party Vendors,<sup>16</sup> Service Bureaus<sup>17</sup> and other non-Members (such as clearing firms): (i) initially per API for FIX, FXD, CTD and MEI ports in the month the Third Party Vendor, Service Bureau or non-Member has been credentialed to use one or more ports in the production environment for the tested API, and (ii) each time a Third Party Vendor, Service Bureau, or other non-Member initiates a change to its system that requires testing and certification. The Exchange also proposes that API Testing and Certification fees will not be assessed to non-Members in situations where the Exchange initiates a mandatory change to the Exchange’s System that requires testing and certification.

The Exchange proposes to assess non-Member API Testing and Certification fees of \$1,200 for Third Party Vendors, Service Bureaus and other non-Members. Below is the proposed fee table for API Testing and Certification fees for non-Members:

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<sup>16</sup> Third Party Vendors are subscribers of MIAX Emerald’s market and other data feeds, which they in turn use for redistribution purposes. Third Party Vendors do not provide connectivity and therefore are not subject to Network testing and certification. See the Definitions section of the Fee Schedule.

<sup>17</sup> “Service Bureau” means a technology provider that offers and supplies technology and technology services to a trading firm that does not have its own proprietary system. See the Definitions section of the Fee Schedule.

<b>Non-Member</b>	<b>API Testing and Certification Fee</b>
Third Party Vendors and Service Bureaus and other non-Members	\$1,200.00

The higher proposed fee charged to Third Party Vendors, Service Bureaus and non-Members reflects the greater amount of time spent by MIAX Emerald employees testing and certifying non-Members. It has been MIAX Emerald’s experience that Member testing takes less time than non-Member testing because Members have more experience testing these systems with exchanges, resulting in generally fewer questions and issues arising during the testing and certification process. Also, because Third Party Vendors and Service Bureaus are redistributing data and reselling services to other Members and market participants, the number and types of scenarios that need to be tested are more numerous and complex than those tested and certified for a single Member.

The Exchange believes it is necessary to charge an API Testing and Certification fee to Members and non-Members because of the time and resources spent to ensure that Member and non-Member APIs function correctly to prevent any System malfunction. Further, the Exchange believes the price differential in API Testing and Certification fees for Members and non-Members is not unfairly discriminatory because, in the Exchange’s experience, Member testing takes less time than non-Member testing as Members have more experience testing these systems with exchanges, resulting generally in fewer questions and issues arising during the testing and certification process.

### Network Connectivity Testing and Certification Fee for Members

The Exchange established electronic communication connections with Members and now proposes to assess Members a Network Connectivity Testing and Certification fee for each 1 Gigabit (“Gb”) connection and 10 Gb ultra-low-latency (“ULL”) connection. The Exchange proposes to assess a Member Network Connectivity Testing and Certification fee: (i) initially per connection in the month the Individual Firm has been credentialed to use any API or Market Data feeds in the production environment utilizing the tested network connection, and (ii) each time an Individual Firm initiates a change to its system that requires network connectivity testing and certification. Network Connectivity Testing and Certification fees will not be assessed in situations where the Exchange initiates a mandatory change to the Exchange’s system that requires testing and certification. Member Network Connectivity Testing and Certification fees will not be assessed for testing and certification of connectivity to the Exchange’s Disaster Recovery Facility.

The Exchange proposes to assess Members a Network Connectivity Testing and Certification Fee of \$1,000 per 1Gb connection and \$4,000 per 10Gb ULL connection. Below is the proposed fee table for Member Network Connectivity Testing and Certification fees:

<b>Type of Member</b>	<b>1 Gigabit Fee Per Connection</b>	<b>10 Gigabit ULL Fee Per Connection</b>
Individual Firm	\$1,000.00	\$4,000.00

The proposed fee amounts are identical to the fees currently assessed for the same services at the Exchange’s affiliates, Miami International Securities Exchange, LLC (“MIAX”) and MIAX PEARL, LLC (“MIAX PEARL”). The Exchange notes that the Emerald Express



Network Interconnect (“EENI”)<sup>18</sup> is a network infrastructure which provides Members and non-Members network connectivity to the trading platforms, market data systems, test systems, and disaster recovery facility of the Exchange. When utilizing a Shared<sup>19</sup> cross-connect, the EENI can also be configured to offer network connectivity to the trading platforms, market data systems, test systems, and disaster recovery facilities of the Exchange’s affiliates, MIAX and MIAX PEARL.

Members utilizing a single, Shared cross-connect to connect to the trading platforms, market data systems, test systems, and disaster recovery facilities of the Exchange, MIAX and MIAX PEARL will only be assessed one Network Connectivity Testing and Certification fee per connection tested, regardless of the trading platforms, market data systems, test systems, and disaster recovery facilities accessed via such connection.

#### Network Connectivity Testing and Certification Fee for Non-Members

MIAX Emerald established electronic connections with Service Bureaus, Extranet Providers and other non-Members, and now proposes to assess a Network Connectivity Testing

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<sup>18</sup> “EENI” means the Emerald Express Network Interconnect, which is a network infrastructure which provides Members and non-Members network connectivity to the trading platforms, market data systems, test systems, and disaster recovery facilities of MIAX Emerald. When utilizing a Shared cross-connect, the EENI can also be configured to offer network connectivity to the trading platforms, market data systems, test systems, and disaster recovery facilities of MIAX and MIAX PEARL. When utilizing a Dedicated cross-connect, the EENI can only be configured to offer network connectivity to the trading platforms, market data systems, and test systems of MIAX Emerald. The EENI consists of the low latency and ultra-low latency connectivity options set forth in the Exchange’s Fee Schedule. See the Definitions section of the Fee Schedule.

<sup>19</sup> “Shared” (cross-connect) means cross-connect that provides network connectivity to the trading platforms, market data systems, test systems, and/or disaster recovery facilities of MIAX Emerald, MIAX and MIAX PEARL via a single, shared connection. The following connections can be Shared across MIAX Emerald, MIAX and MIAX PEARL: 1 Gigabit, 1 Gigabit Disaster Recovery, and 10 Gigabit Disaster Recovery. See the Definitions section of the Fee Schedule.

and Certification fee for each 1Gb connection and 10Gb ULL connection. The Exchange proposes to assess a non-Member Network Connectivity Testing and Certification fee: (i) initially per connection in the month the Service Bureau, Extranet Provider or other non-Member has been credentialed to use any API or Market Data feeds in the production environment using the tested network connection, and (ii) each time Service Bureau, Extranet Provider or other non-Member initiates a change to its system that requires network connectivity testing and certification. Network Connectivity Testing and Certification fees will not be assessed in situations where the Exchange initiates a mandatory change to the Exchange’s system that requires testing and certification. Non-Member Network Connectivity Testing and Certification fees will not be assessed for testing and certification of connectivity to the Exchange’s Disaster Recovery Facility.

The Exchange proposes to assess non-Members a Network Connectivity Testing and Certification Fee of \$1,200 per 1Gb connection and \$4,200 per 10Gb ULL connection. Below is the proposed fee table for non-Member Network Connectivity Testing and Certification fees:

<b>Non-Member</b>	<b>1 Gigabit Fee Per Connection</b>	<b>10 Gigabit ULL Fee Per Connection</b>
Service Bureau/Extranet Provider and other non- Members	\$1,200.00	\$4,200.00

The EENI is also available to non-Member subscribers. For non-Member subscribers, when utilizing a Shared cross-connect, the EENI can also be configured to offer network connectivity to the trading platforms, market data systems, test systems, and disaster recovery facilities of the Exchange’s affiliates, MIAX and MIAX PEARL. Accordingly, non-Members

utilizing Shared cross-connects to connect to the trading platforms, market data systems, test systems, and disaster recovery facilities of the Exchange and its affiliates, MIAX and MIAX PEARL, will only be assessed one Network Connectivity Testing and Certification fee per connection tested, regardless of the trading platforms, market data systems, test systems, and disaster recovery facilities accessed via such connection. The Member and non-Member Network Testing and Certification fees represent installation and support costs incurred by the Exchange as it works with each Member and non-Member to make sure there are appropriate electronic connections with MIAX Emerald. The Exchange's affiliates, MIAX and MIAX PEARL, charge the same fees for the same services for their Members and non-Members.<sup>20</sup> The Exchange proposes to assess a higher Network Connectivity Testing and Certification fee to non-Members than to Members, similar to how MIAX and MIAX PEARL assesses such fees to their Members and non-Members. The higher fee charged to non-Members reflects the greater amount of time spent by MIAX Emerald employees testing and certifying non-Members. It has been MIAX Emerald's experience that Member network connectivity testing takes less time than non-Member network connectivity testing because Members have more experience testing these systems with exchanges as generally fewer questions and issues arise during the testing and certification process.

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. 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

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<sup>20</sup> See MIAX Fee Schedule, Sections 4)c) and 4)d); see also MIAX PEARL Fee Schedule, Sections 4)c) and 4)d).

been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>21</sup>

There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than approximately 16% market share.<sup>22</sup> Therefore, no exchange possesses significant pricing power. More specifically, for the month of August 2020, the Exchange had an approximately 3.24% market share of executed volume of multiply-listed equity options.<sup>23</sup> The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can discontinue or reduce use of certain categories of products, or shift order flow, in response to non-transaction and transaction fee changes. For example, on February 28, 2019, the Exchange’s affiliate, MIAX PEARL, LLC (“MIAX PEARL”) filed with the Commission a proposal to increase Taker fees in certain Tiers for options transactions in certain Penny classes for Priority Customers and decrease Maker rebates in certain Tiers for options transactions in Penny classes for Priority Customers (which fee was to be effective March 1, 2019).<sup>24</sup> MIAX PEARL experienced a decrease in total market share for the month of March 2019, after the proposal went into effect. Accordingly, the Exchange believes that the MIAX PEARL March 1, 2019 fee change, to increase certain transaction fees and decrease certain transaction rebates, may have contributed to the decrease in MIAX

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<sup>21</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

<sup>22</sup> The Options Clearing Corporation (“OCC”) publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available here: <https://www.theocc.com/market-data/volume/default.jsp>.

<sup>23</sup> See *id.*

<sup>24</sup> See Securities Exchange Act Release No. 85304 (March 13, 2019), 84 FR 10144 (March 19, 2019) (SR-PEARL-2019-07).

PEARL's market share and, as such, the Exchange believes competitive forces constrain the Exchange's, and other options exchanges, ability to set transaction fees and market participants can shift order flow based on fee changes instituted by the exchanges.

Further, as there are currently 16 registered options exchanges competing for order flow with no single exchange accounting for more than approximately 16% of market share,<sup>25</sup> the Exchange cannot predict with certainty whether any market participant is planning to utilize any of the services of the Exchange such that API testing and certification or network connectivity testing and certification would be required, in which the Member or non-Member would be subject to the proposed API Testing and Certification fees and/or the Network Connectivity Testing and Certification fees that the Exchange proposes to establish herein.

## 2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act<sup>26</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>27</sup> 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 proposal furthers the objectives of Section 6(b)(5) of the Act 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.

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<sup>25</sup> See supra note 22.

<sup>26</sup> 15 U.S.C. 78f(b).

<sup>27</sup> 15 U.S.C. 78f(b)(4) and (5).

The Exchange believes its proposal to adopt API Testing and Certification fees and Network Connectivity Testing and Certification fees provides for the equitable allocation of reasonable dues and fees and is not unfairly discriminatory for the following reasons. First, the Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. 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.”<sup>28</sup> There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than approximately 16% of the market share of executed volume of multiply-listed equity and ETF options.<sup>29</sup> Therefore, no exchange possesses significant pricing power. More specifically, for the month of August 2020, the Exchange had approximately 3.24% market share of executed volume of multiply-listed equity options.<sup>30</sup>

The Exchange also believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can discontinue or reduce use of certain categories of products, or shift order flow, in response to non-transaction and transaction fee changes. For example, on February 28, 2019, the Exchange’s affiliate, MIAX PEARL, filed

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<sup>28</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

<sup>29</sup> The Options Clearing Corporation (“OCC”) publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available here: <https://www.theocc.com/market-data/volume/default.jsp>.

<sup>30</sup> See *id.*

with the Commission a proposal to increase Taker fees in certain Tiers for options transactions in certain Penny classes for Priority Customers and decrease Maker rebates in certain Tiers for options transactions in Penny classes for Priority Customers (which fee was to be effective March 1, 2019).<sup>31</sup> MIAX PEARL experienced a decrease in total market share for the month of March 2019, after the proposal went into effect. Accordingly, the Exchange believes that the MIAX PEARL March 1, 2019 fee change, to increase certain transaction fees and decrease certain transaction rebates, may have contributed to the decrease in MIAX PEARL's market share and, as such, the Exchange believes competitive forces constrain the Exchange's, and other options exchanges, ability to set transaction fees and market participants can shift order flow based on fee changes instituted by the exchanges.

Second, the Exchange believes its proposal to adopt API Testing and Certification fees and Network Connectivity Testing and Certification fees for Members and non-Members is an equitable allocation of reasonable dues and fees pursuant to Section 6(b)(4) of the Act<sup>32</sup> because of the time and resources spent to ensure that Member and non-Member APIs and connectivity function correctly to prevent any System malfunction. Further, the Exchange believes the price differential in API Testing and Certification fees and Network Connectivity Testing and Certification fees for Members and non-Members is not unfairly discriminatory because, in the Exchange's experience, Member testing utilizes less Exchange resources and employee time than non-Member testing as Members have more experience testing these systems with exchanges, resulting generally in fewer questions and issues arising during the testing and certification process. Also, with respect to API testing and certification, because Third Party Vendors and

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<sup>31</sup> See supra note 24.

<sup>32</sup> 15 U.S.C. 78f(b)(4).

Service Bureaus are redistributing data and reselling services to other Members and market participants the number and types of scenarios that need to be tested are more numerous and complex than those tested and certified for Members.

Accordingly, the Exchange no longer believes it is necessary to waive API Testing and Certification fees and Network Connectivity Testing and Certification fees to attract market participants to the MIAX Emerald market since this market is now established and MIAX Emerald no longer needs to rely on such waivers to attract market participants. The Exchange believes its proposed API Testing and Certification fees and Network Connectivity Testing and Certification fees are reasonable and well within the range of non-transaction fees assessed among other exchanges, including the Exchange's affiliates, MIAX and MIAX PEARL.<sup>33</sup>

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees for services and products, in addition to order flow, to remain competitive with other exchanges. The Exchange believes that the proposed changes reflect this competitive environment.

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.

Intra-Market Competition

The Exchange does not believe that the proposed rule change would place certain market participants at the Exchange at a relative disadvantage compared to other market participants or affect the ability of such market participants to compete. Unilateral action by MIAX Emerald in

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<sup>33</sup> See supra note 20.



the assessment of certain non-transaction fees for services provided to its Members and others using its facilities will not have an impact on competition. As a more recent entrant in the already highly competitive environment for equity options trading, MIAX Emerald does not have the market power necessary to set prices for services that are unreasonable or unfairly discriminatory in violation of the Act. MIAX Emerald's proposed API Testing and Certification fee levels and Network Connectivity Testing and Certification fee levels, as described herein, are comparable to fee levels charged by other options exchanges for the same or similar services, including those fees assessed by the Exchange's affiliates, MIAX and MIAX PEARL.<sup>34</sup>

The Exchange believes that the proposed API Testing and Certification fees and Network Connectivity Testing and Certification fees do not place certain market participants at a relative disadvantage to other market participants because the fees do not apply unequally to different size market participants, but instead would allow the Exchange charge for the time and resource necessary for API testing and certification and network connectivity testing and certification for Members and non-Members to ensure proper functioning of all available order types, new order entry, order management, order throughput and mass order cancellation (as well as, for Market Makers, all available quote types, quote throughput, quote management and cancellation, Aggregate Risk Manager settings and triggers, and confirmation of quotes within the trading engines). Accordingly, the proposed API Testing and Certification fees and network connectivity testing and certification fees do not favor certain categories of market participants in a manner that would impose a burden on competition.

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<sup>34</sup> See supra note 20.

### Inter-Market Competition

The Exchange believes the proposed API Testing and Certification fees and network connectivity testing and certification fees do not place an undue burden on competition on other SROs that is not necessary or appropriate. The Exchange operates in a highly competitive market in which market participants can readily favor one of the 16 competing options venues if they deem fee levels at a particular venue to be excessive.<sup>35</sup> Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% market share. Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. For the month of August 2020, the Exchange had a market share of approximately 3.24% of executed multiply-listed equity options<sup>36</sup> and the Exchange believes that the ever-shifting market share among exchanges from month to month demonstrates that market participants can discontinue or reduce use of certain categories of products, or shift order flow, in response to fee changes. In such an environment, the Exchange must continually adjust its fees and fee waivers to remain competitive with other exchanges and to attract order flow to the Exchange.

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.

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<sup>35</sup> See supra note 22.

<sup>36</sup> Id.

### 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,<sup>37</sup> and Rule 19b-4(f)(2)<sup>38</sup> 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 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](mailto:rule-comments@sec.gov). Please include File Number SR-EMERALD-2020-09 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-2020-09. This file number should be included on the subject line if e-mail is used. To help the Commission process and review

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<sup>37</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>38</sup> 17 CFR 240.19b-4(f)(2).

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-2020-09 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>39</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>39</sup> 17 CFR 200.30-3(a)(12).