

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-91406; File No. SR-EMERALD-2021-10)

March 25, 2021

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the MIAX Emerald Fee Schedule To Adopt an Excessive Quoting Fee

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 March 12, 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 MIAX Emerald Fee Schedule (the “Fee Schedule”) to adopt new Section 1)c), Excessive Quoting Fee.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange proposes to amend the Fee Schedule to adopt new Section 1)c), Excessive Quoting Fee.

Background

The Exchange initially filed its proposal to adopt the Excessive Quoting Fee on February 8, 2021.³ On February 22, 2021, the Exchange withdrew the First Proposed Rule Change and now resubmits this proposal to provide additional background information and make further changes due to business reasons.

The Exchange recently completed a significant upgrade to its System’s⁴ network architecture, based on customer demand, which has resulted in the Exchange’s network environment becoming more transparent and deterministic. This project included additional network development in several areas, which resulted in: (i) minimum latency between multicast market data signals disseminated by the Exchange across the extranet switches; (ii) a reduction in the occurrence of message sequence inversions from Members⁵ to the Exchange quoting gateway processors; (iii) assurance of the optical fiber path for participants within extremely tight

³ See SR-EMERALD-2021-06 (the “First Proposed Rule Change”).

⁴ The term “System” means the automated trading system used by the Exchange for the trading of securities. See Exchange Rule 100.

⁵ “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 the Definitions Section of the Fee Schedule and Exchange Rule 100.

tolerances; (iv) a re-architected and engineered participant quoting gateway; and (v) the Exchange being able to better measure the performance of the network and System at extremely tight tolerances and the ability to provide Members with reporting on the performance of their own systems.

Proposal

The Exchange proposes to amend the Fee Schedule to adopt new Section 1)c), Excessive Quoting Fee. The Exchange proposes to assess an Excessive Quoting Fee of \$10,000 per day to any Market Maker⁶ that exceeds 2.5 billion inbound quotes⁷ sent to the Exchange on that particular day. In counting the total number of quotes for the purposes of the Excessive Quoting Fee, the Exchange proposes to exclude messages that are generated as a result of sending a mass purge message to the Exchange. The Exchange proposes that the 2.5 billion inbound quote limit for the Excessive Quoting Fee will reset each trading day.

The purpose of this proposal is to ensure that Market Makers do not over utilize the Exchange's System by sending excessive quotes to the Exchange, to the detriment of all other Members of the Exchange. Market Makers that send an excessive number of quotes to the Exchange on any particular day have the potential residual effect of exhausting System resources, bandwidth, and capacity. In turn, this may create latency and impact other Members' and non-Members' ability to send messages to the Exchange and receive timely executions.

⁶ The term "Market Maker" refers to "Lead Market Maker" ("LMM"), "Primary Lead Market Maker" ("PLMM") and "Registered Market Maker" ("RMM"), collectively. See the Definitions Section of the Fee Schedule and Exchange Rule 100.

⁷ The term "quote" or "quotation" means a bid or offer entered by a Market Maker that is firm and may update the Market Maker's previous quote, if any. The Rules of the Exchange provide for the use of different types of quotes, including Standard quotes and eQuotes, as more fully described in Rule 517. A Market Maker may, at times, choose to have multiple types of quotes active in an individual option. See the Definitions Section of the Fee Schedule.

The Exchange's high performance network provides unparalleled system throughput and the capacity to handle approximately 38 million messages per second. On an average day, the Exchange handles over approximately 11 billion total messages. These billions of messages per day consume the Exchange's resources, particularly storage capabilities. The combination of (i) Member quoting behavior, (ii) increased volatility in the marketplace, and (iii) increased number of options products quoted on the Exchange has a significant impact on the total number of quotes sent each trading day, resulting in additional storage capacity. The Exchange believes this proposal will reduce the potential for market participants to engage in excessive quoting behavior that would require the Exchange to increase its storage capacity and will encourage quotes to be made in good faith.

Recognizing that orders and executions often occur in large numbers, the purpose of this proposal is to focus on activity that is truly disproportionate while fairly allocating costs. The proposal contemplates that a Market Maker would have to exceed the high threshold of 2.5 billion inbound quotes before that Market Maker would be charged the proposed fee on that particular trading day. The Exchange believes that it is in the interests of all Members and market participants who access the Exchange to not allow other market participants to exhaust System resources, but to encourage efficient usage of network capacity.

The Exchange believes that this concept is not new or novel.⁸ The Exchange notes that although prior similar proposals from other exchanges relating to capacity-type fees focused on

⁸ See Securities Exchange Act Release No. 60117 (June 16, 2009), 74 FR 30190 (June 24, 2009) (SR-AMEX-2009-25) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Schedule of Fees and Charges for Exchange Services by Adding a Ratio Threshold Fee); 64655 (June 13, 2011), 76 FR 35495 (June 17, 2011) (SR-AMEX-2011-37) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Amex Options Fee Schedule To Establish a New Fee Designed To Encourage Efficient Use of Bandwidth by ATP Firms and To Rename a

flow through capacity, the Exchange has determined to adopt a quote cap methodology at this time for business reasons. The Exchange's proposal is not intended to raise revenue; rather, it is intended to encourage efficient quoting behavior so that market participants do not exhaust System resources.

The Exchange believes adopting the proposed fee will protect the integrity of the MIAX Emerald market and benefit all market participants of MIAX Emerald by ensuring that the Exchange's System is not overloaded from excessive quotes being sent to it each day. The Exchange notes that it will provide Market Makers with daily reports, free of charge, which will detail their quoting activity in order for those firms to be fully aware of the number of quotes they are sending to the Exchange. This will allow firms to ensure that their quoting behavior does not approach the proposed 2.5 billion inbound quote limit.

The Exchange notes that since the launch of MIAX Emerald in March of 2019, no Market Maker has reached approximately more than two thirds of the proposed 2.5 billion inbound quote limit threshold during peak trading days, including days with high volatility in the marketplace. Accordingly, the Exchange does not anticipate that any Market Maker will exceed the proposed 2.5 billion inbound quote limit and become subject to the proposed fee. The Exchange notes that this proposal is not intended to raise revenue for the Exchange; rather, it is intended to ensure that Market Makers are using their quoting methodologies in the most

Related Existing Fee); 53522 (March 20, 2006), 71 FR 14975 (March 24, 2006) (SR-ISE-2006-09) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to Session/API Fees); 55941 (June 21, 2007), 72 FR 35535 (June 28, 2007) (SR-ISE-2007-36) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change as Modified by Amendment No. 1 Thereto Relating to API Fees); 84963 (December 26, 2018), 84 FR 830 (January 31, 2019) (SR-CboeBZX-2018-095) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the BZX Equities Fee Schedule).

efficient manner possible in light of the Exchange's highly deterministic and transparent infrastructure.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act⁹ in general, and furthers the objectives of Section 6(b)(4) of the Act¹⁰ 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 Act¹¹ in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general protects investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes that its proposal is designed to promote just and equitable principles of trade, 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 because it will encourage efficient utilization of the Exchange's highly deterministic and transparent network architecture. The Exchange believes that unfettered usage of System capacity and network resource consumption can have a detrimental effect on all market participants who are potentially compelled to send quote messages to the Exchange on an

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4).

¹¹ 15 U.S.C. 78f(b)(5).

unlimited basis, to the detriment of all other market participants who access and use the Exchange. Further, the proposed fee and message limit will apply equally to all Market Makers who send quotes to the Exchange in excess of 2.5 billion inbound quotes on any particular trading day.

The Exchange believes that the proposal is not unfairly discriminatory due to the substantial quote limit that the proposal contemplates before the proposed fee kicks in, as well as the normal Market Maker quote traffic that the Exchange has experienced since it began operations in March of 2019. In addition, the Exchange believes that by excluding messages that are generated from a mass purge message sent to the Exchange from the calculation of the total quotes for the proposed fee is not unfairly discriminatory because it will keep from disadvantaging firms that choose to use mass purges on a regular basis for risk management reasons. The Exchange notes that since the launch of MIAX Emerald in March of 2019, no Market Maker has reached approximately more than two-thirds of the proposed 2.5 billion inbound quote limit threshold during peak trading days, including days with high volatility in the marketplace. The Exchange does not anticipate that any Market Maker will exceed the proposed 2.5 billion inbound quote limit and become subject to the proposed fee.

The Exchange further believes that its proposal is reasonable, equitably allocated and not unfairly discriminatory because it is not intended to raise revenue for the Exchange; rather, it is intended to ensure that Market Makers are using their quoting methodologies in the most efficient manner possible in light of the Exchange's highly deterministic and transparent infrastructure. The Exchange believes that the proposed fee and quote limit is reasonable, equitably allocated and not unfairly discriminatory because this proposal will reduce the potential for market participants to engage in excessive quoting behavior that would require the

Exchange to increase its storage capacity and will encourage quotes to be made in good faith. The Exchange notes that other exchanges have implemented similar fees and capacity type-limits in order to deter their firms from over-utilizing their trading systems and exhausting system resources, while encouraging the efficient usage of system resources.¹²

The Exchange therefore believes that the proposed Excessive Quoting Fee both appropriately reflects the benefits to different firms of being able to send quotes into the Exchange's trading System, and facilitates the Commission's goal of ensuring that critical market infrastructure has "levels of capacity, integrity, resiliency, availability, and security adequate to maintain their operational capability and promote the maintenance of fair and orderly markets."¹³

The Exchange will also review the quoting behavior of all firms on a regular basis to ensure that the inbound quote limit remains significantly higher than the average firm quoting behavior, while taking into account varying market conditions. The Exchange will regularly monitor prevailing market conditions to ensure that the inbound quote limit is sufficiently flexible and could not inadvertently result in higher than anticipated fees being charged to firms that are providing liquidity in volatile, high volume markets. The Exchange does not want to discourage such liquidity provision and believes that it should be able to adjust the inbound quote limit on a monthly basis if need be.

¹² See supra note 8.

¹³ See Securities Exchange Act Release No. 73639 (November 19, 2014), 79 FR 72251 (December 5, 2014) (File No. S7-01-13) (Regulation SCI Adopting Release).

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 believes that the proposal does not put any market participants at a relative disadvantage compared to other market participants because the proposed fee and message limit will apply equally to all Market Makers who send quotes to the Exchange in excess of 2.5 billion inbound quotes on any particular trading day. The Exchange also believes that the proposed fee neither favors nor penalizes one or more categories of market participants in a manner that would impose an undue burden on competition. Rather, the proposal seeks to benefit all market participants by encouraging the efficient utilization of the Exchange's highly deterministic and transparent network architecture. Further, the Exchange notes that since the launch of MIAX Emerald in March of 2019, no Market Maker has reached approximately more than two-thirds of the proposed 2.5 billion inbound quote limit threshold during peak trading days, including days with high volatility in the marketplace. Accordingly, the Exchange does not anticipate that any Market Maker will exceed the proposed 2.5 billion inbound quote limit and become subject to the proposed fee. Accordingly, the Exchange believes that the proposed Excessive Quoting Fee does not favor certain categories of market participants in a manner that would impose a burden on competition.

Inter-Market Competition

The Exchange believes the proposal does not place an undue burden on competition on other self-regulatory organizations that is not necessary or appropriate because of the availability of numerous substitute options exchanges. There are 15 other options exchanges where market

participants can become members and send quotes if they deem the 2.5 billion inbound quote limit to be too restrictive for their quoting behavior. In addition, the Exchange does not believe the proposal will impose any burden on inter-market competition as the proposal does not address any competitive issues; rather, it is intended to protect all market participants of MIAX Emerald by ensuring that the Exchange's System is not overloaded from excessive quotes being sent to it each day.

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,¹⁴ and Rule 19b-4(f)(2)¹⁵ 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:

¹⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁵ 17 CFR 240.19b-4(f)(2).

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-2021-10 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-EMERALD-2021-10. 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-2021-10 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.¹⁶

J. Matthew DeLesDernier
Assistant Secretary

¹⁶ 17 CFR 200.30-3(a)(12).