

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-91701; File No. SR-EMERALD-2021-14)

April 29, 2021

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Exchange Rule 515, Execution of Orders and Quotes; Rule 516, Order Types Defined; Rule 517, Quote Types Defined; Rule 605, Market Maker Orders; and Rule 612, Aggregate Risk Manager to Eliminate Fill-or-Kill (FOK) Orders and FOK eQuotes

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 April 19, 2021, MIAX Emerald, LLC (“MIAX Emerald” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the 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 proposes to amend Exchange Rule 515, Execution of Orders and Quotes; Rule 516, Order Types Defined; Rule 517 Quote Types Defined; Rule 605, Market Maker Orders; and Rule 612 Aggregate Risk Manager to eliminate Fill-or-Kill (FOK) Orders and FOK eQuotes from the rulebook and to delete references to same.

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.

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 its rules to eliminate Fill-or-Kill Orders and Fill-or-Kill eQuotes. A Fill-or-Kill (“FOK”) Order is described by the Exchange as a limit order that is to be executed in its entirety at a single price as soon as it is received and, if not so executed is cancelled.³ A Fill-or-Kill (“FOK”) eQuote is described by the Exchange as an eQuote submitted by a Market Maker⁴ that must be matched with another quote or order for an execution in its entirety at a single price upon receipt into the System⁵ or will be immediately cancelled.⁶

Specifically, the Exchange now proposes to amend paragraph (c)(1) of Exchange Rule 515 to remove the reference regarding Fill-or-Kill Orders. The Exchange proposes to remove the text in paragraph (f) in its entirety, but to leave paragraph (f) in place and mark it as reserved for future use. The Exchange proposes to remove subparagraph (2) of paragraph (b) of Exchange

³ See Exchange Rule 516(b)(2).

⁴ The term “Market Makers” refers to “Lead Market Makers”, “Primary Lead Market Makers” and “Registered Market Makers” 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 Exchange Rule 517(a)(2)(iv).

Rule 516 in its entirety, and to renumber current subparagraph (3) to new subparagraph (2). The Exchange proposes to remove subparagraph (iv) of paragraph (a)(2) from Rule 517 in its entirety, and to renumber current subparagraph (v) to new subparagraph (iv). Additionally, the Exchange proposes to remove subparagraph (4) of paragraph (d) from Rule 517 in its entirety, and to renumber current subparagraph (5) to new subparagraph (4). The Exchange proposes to amend paragraph (a) of Exchange Rule 605 to remove a reference to Fill-or-Kill Orders. The Exchange proposes to amend subparagraph (c) of Policy .02 of Exchange Rule 612 to remove a reference to FOK eQuotes and to make minor non substantive edits to the rule text.

MIAX Emerald is an affiliate exchange of the MIAX Options Exchange and offers similar functionality and similar order types as MIAX Options. MIAX Options Exchange Rule 516 states,

It should be noted that some of the order types defined below are valid only during certain portions of the trading day (e.g., Opening Orders) or during certain events (e.g., Auction or Cancel Orders). If a Member submits an order type during a time period when the order type is not valid, the System will reject the order. It should also be noted that not all of the order types listed and described in this rule will be initially available for use on the Exchange. The Exchange will issue a Regulatory Circular listing which order types, among the order types set forth below, are available. Additional Regulatory Circulars will be issued as additional order types, among those order types set forth below, become available for use on the Exchange. Regulatory Circulars will also be issued when an order type that had been in usage on the Exchange will no longer be available for use.

MIAX Options recently issued Regulatory Circulars indicating that FOK Orders and FOK eQuotes will no longer be available for use on the MIAX Options Exchange.⁷ MIAX Emerald proposes to make both FOK Orders and FOK eQuotes unavailable on the MIAX

⁷ See MIAX Options Regulatory Circular 2021-20, Fill-or-Kill Orders will no longer be supported on the MIAX Options Exchange (April 8, 2021) available at https://www.miaxoptions.com/sites/default/files/circular-files/MIAX_Options_RC_2021_20.pdf; and MIAX Options Regulatory Circular 2021-21, Fill-or-Kill eQuotes will no longer be supported on the MIAX Options Exchange (April 9, 2021) available at: https://www.miaxoptions.com/sites/default/files/circular-files/MIAX_Options_RC_2021_21.pdf.

Emerald Exchange so as to avoid confusion among Members⁸ that may be Members of both MIAX Options and MIAX Emerald.⁹

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act¹⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act¹¹ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that its proposal promotes just and equitable principles of trade and removes impediments to and perfects the mechanisms of a free and open market and a national market system and, in general, protects investors and the public interest by removing an order type from the Exchange that is not widely used by investors. Removing an infrequently used order type from the Exchange's rulebook benefits investors by simplifying the Exchange's rulebook.

Additionally, the Exchange believes that its proposal promotes just and equitable principles of trade and removes impediments to and perfects the mechanism of a free and open

⁸ The term "Member" means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed "members" under the Exchange Act. See Exchange Rule 100.

⁹ The Exchange notes that FOK Orders and FOK eQuotes are not available on the Exchange's other affiliate exchange, MIAX Pearl Options Exchange.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

market and a national market system and, in general, protects investors and the public interest by aligning functionality available on the Exchange to that of its affiliate exchange. Specifically, the Exchange believes that although MIAX Emerald rules may, in certain instances, intentionally differ from MIAX Options rules, the proposed change will promote uniformity with the MIAX Options Exchange and allow MIAX Emerald to provide functionality similar to MIAX Options. MIAX Emerald and MIAX Options may have a number of common Members, and where feasible the Exchange intends to provide consistency between MIAX Options and MIAX Emerald so as to avoid confusion among Members.

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 will not impose any burden on intra-market competition because the rules of the Exchange apply equally to all Members. Members may still receive an immediate execution on the Exchange by using an Immediate-or-Cancel Order.¹²

The Exchange does not believe that the proposed rule change will impose any burden on inter-market competition as the Exchange's proposal is not designed to address any competitive issues. The Exchange's proposal removes an infrequently used order type from the Exchange and aligns its functionality to its affiliate Exchange, MIAX Options. Additionally, the Exchange believes the proposed rule change will not impose any burden on inter-market competition as

¹² An Immediate-or-Cancel Order is an order that is to be executed in whole or in part upon receipt. Any portion not so executed is cancelled. An Immediate-or-Cancel Order is not valid during the Opening Process described in MIAX Emerald Rule 503. See Exchange Rule 516(c).

option exchanges offer a variety of order types and not every option exchange offers every order type.¹³

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁴ and Rule 19b-4(f)(6) thereunder.¹⁵

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)¹⁶ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange asserted that the waiver would allow the Exchange to harmonize its

¹³ BOX Options Exchange supports a Fill and Kill (FAK) order type but not a Fill or Kill order type. See BOX Exchange Rule 7110. Nasdaq Phlx supports an All-or-None Order but not a Fill or Kill order type. See Nasdaq Phlx Options 3, Section 7(b)(5).

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 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.

¹⁶ 17 CFR 240.19b-4(f)(6)(iii).

functionality to that of MIAX Options Exchange and thus reduce the potential for confusion among its Members. The Exchange also stated that it does not believe that removal of the FOK order type will impact users as this order type is infrequently used on the Exchange. For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest, and will allow the Exchange to immediately align its functionality with MIAX Options Exchange and simplify its rulebook to remove an infrequently used order type. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.¹⁷

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 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

¹⁷ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-EMERALD-2021-14 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-2021-14. 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, D.C. 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-2021-14 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.¹⁸

J. Matthew DeLesDernier
Assistant Secretary

¹⁸ 17 CFR 200.30-3(a)(12).