

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-85207; File No. SR-EMERALD-2019-09)

February 27, 2019

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Establish MIAX Emerald Top of Market (“ToM”) Data Feed, MIAX Emerald Complex Top of Market (“cToM”) Data Feed, MIAX Emerald Administrative Information Subscriber (“AIS”) Data Feed, and MIAX Emerald Order Feed (“MOR”)

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 February 26, 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 establish certain market data products. 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.

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

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

<sup>2</sup> 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 establish the MIAX Emerald Top of Market (“ToM”) data feed, MIAX Emerald Complex Top of Market (“cToM”) data feed, MIAX Emerald Administrative Information Subscriber (“AIS”) data feed, and MIAX Emerald Order Feed (“MOR”).

ToM provides market participants with a direct data feed that includes the Exchange’s best bid and offer, with aggregate size, and last sale information, based on order and quoting interest on the Exchange. The ToM data feed includes data that is identical to the data sent to the processor for the Options Price Reporting Authority (“OPRA”). The ToM and OPRA data leave the MIAX Emerald System<sup>3</sup> at the same time, as required under Section 5.2(c)(iii)(B) of the Limited Liability Company Agreement of the Options Price Reporting Authority LLC (the “OPRA Plan”), which prohibits the dissemination of proprietary information on any more timely basis than the same information is furnished to the OPRA system for inclusion in OPRA’s consolidated dissemination of options information. ToM will also contain a feature that provides the number of Priority Customer<sup>4</sup> contracts that are included in the size associated with the Exchange’s best bid and offer.

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<sup>3</sup> The term “System” means the automated trading system used by the Exchange for the trading of securities. See Exchange Rule 100.

<sup>4</sup> The term “Priority Customer” means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). See Exchange Rule 100.

cToM will provide subscribers with the same information as the ToM market data product as it relates to the Strategy Book, i.e., the Exchange's best bid and offer for a complex strategy, with aggregate size, based on displayable order and quoting interest in the complex strategy on the Exchange. cToM will also provide subscribers with the identification of the complex strategies currently trading on MIAX Emerald; complex strategy last sale information; and the status of securities underlying the complex strategy (e.g., halted, open, or resumed). cToM is distinct from ToM, and anyone wishing to receive cToM data must subscribe to cToM regardless of whether they are a current ToM subscriber. ToM subscribers are not required to subscribe to cToM, and cToM subscribers are not required to subscribe to ToM.

AIS provides market participants with a direct data feed that allows subscribers to receive real-time updates of products traded on MIAX Emerald, trading status for MIAX Emerald and products traded on MIAX Emerald, and liquidity seeking event notifications. The AIS market data feed includes opening imbalance condition information, opening routing information, expanded quote range information, post-halt notifications, and liquidity refresh condition information. AIS real-time messages are disseminated over multicast to achieve a fair delivery mechanism. AIS notifications provide current electronic system status allowing subscribers to take necessary actions immediately.

MOR provides market participants with a direct data feed that allows subscribers to receive real-time updates of options orders, products traded on MIAX Emerald, MIAX Emerald Options System status, and MIAX Emerald Options Underlying trading status. Subscribers to the data feed will get a list of all options symbols and strategies that will be traded and sourced on that feed at the start of every session.

The proposed data products provide valuable information that can help subscribers make informed investment decisions, and operate in the same manner as similar data products offered by the Miami International Securities Exchange, LLC (“MIAX Options”), namely the MIAX Options Top of Market data product (“MIAX ToM”),<sup>5</sup> MIAX Options Complex Top of Market data product (“MIAX cToM”),<sup>6</sup> MIAX Options Administrative Information Subscriber data product (“AIS”),<sup>7</sup> and the MIAX Options Order Feed data product (“MOR”).<sup>8</sup> Each of these proposed data products is available to members and non-members, and to both professional and non-professional subscribers.

The Exchange represents that it will make ToM, cToM, AIS, and MOR equally available to any market participant that wishes to subscribe to any of those products. The Exchange is not presently going to charge market participants any fees associated with these market data products. If, and when, the Exchange proposes to establish such fees, the Exchange will submit a proposed rule change under 19b-4.

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<sup>5</sup> For a complete description of the MIAX Options ToM data product, see Securities Exchange Act Release Nos. 69007 (February 28, 2013), 78 FR 14617 (March 6, 2013) (SR-MIAX-2013-05); 69518 (May 6, 2013), 78 FR 27462 (May 10, 2013) (SR-MIAX-2013-18); 73395 (October 21, 2014), 79 FR 63979 (October 27, 2014) (SR-MIAX-2014-53).

<sup>6</sup> See Securities Exchange Act Release No. 79146 (October 24, 2016), 81 FR 75171 (October 28, 2016) (SR-MIAX-2016-36).

<sup>7</sup> See Securities Exchange Act Release Nos. 69320 (April 5, 2013), 78 FR 21661 (April 11, 2013) (SR-MIAX-2013-13); 82740 (February 20, 2018), 83 FR 8304 (February 26, 2018) (SR-MIAX-2018-04).

<sup>8</sup> For a complete description of the MOR data product, see Securities Exchange Act Release No. 74759 (April 17, 2015), 80 FR 22749 (April 23, 2015) (SR-MIAX-2015-28).

## 2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b)<sup>9</sup> of the Act in general, and furthers the objectives of Section 6(b)(5)<sup>10</sup> of the Act 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.

The ToM market data product is designed to promote just and equitable principles of trade by providing all subscribers with top of market data that includes the Exchange's best bid and offer, with aggregate size, and last sale information, based on order and quoting interest on the Exchange that should enable them to make informed decisions on trading on MIAX Emerald by using the ToM data to assess current market conditions that directly affect such decisions.

The cToM market data product is designed to promote just and equitable principles of trade by providing all subscribers with top of market data that includes similar information provide via ToM but for the Exchange's complex order Strategy Book<sup>11</sup> including the Exchange's best bid and offer for a complex strategy, with aggregate size, based on displayable order and quoting interest in the complex strategy on the Exchange that should enable subscribers to make informed decisions on trading on MIAX Emerald by using the cToM data to assess current market conditions that directly affect such decisions.

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<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> The "Strategy Book" is the Exchange's electronic book of complex orders and complex quotes. See Exchange Rule 518(a)(17).

The MOR market data product is designed to promote just and equitable principles of trade by providing all subscribers with limit order book data that should enable subscribers to make informed decisions on trading in MIAX Emerald options by using the MOR data to assess current market conditions that directly affect such decisions. The proposed market data product facilitates transactions in securities, removes impediments to and perfect the mechanisms of a free and open market and a national market system by enhancing the subscribers' ability to make decisions on trading strategy, and by providing data that should help bring about such decisions in a timely manner to the protection of investors and the public interest. The market data provided by MOR removes impediments to, and is designed to further perfect, the mechanisms of a free and open market and a national market system by making the MIAX Emerald market more transparent and accessible to market participants making routing decisions concerning their options orders. The MOR market data product is also designed to protect investors and the public interest by providing data to subscribers that is already currently available on other exchanges and will enable MIAX Emerald to compete with such other exchanges, thereby offering market participants with additional data in order to seek the market center with the best price and the most liquidity on which to execute their transactions, all to the benefit of investors and the public interest, and to the marketplace as a whole.

The AIS market data product is designed to promote just and equitable principles of trade by providing all subscribers with administrative information concerning product states and liquidity seeking events on the Exchange that should enable them to make informed decisions on trading in MIAX Emerald options by using the AIS data to assess current market conditions that directly affect such decisions. The proposed market data product facilitates transactions in securities, removes impediments to and perfect the mechanisms of a free and open market and a

national market system by enhancing the subscribers' ability to make decisions on trading strategy, and by providing data that should help bring about such decisions in a timely manner to the protection of investors and the public interest. The market data provided by AIS removes impediments to, and is designed to further perfect, the mechanisms of a free and open market and a national market system by making the MIAX Emerald market more transparent and accessible to market participants making routing decisions concerning their options orders. The AIS market data product is also designed to protect investors and the public interest by providing data to subscribers that is already currently available on other exchanges and will enable MIAX Emerald to compete with such other exchanges, thereby offering market participants with additional data in order to seek the market center with the best price and the most liquidity on which to execute their transactions, all to the benefit of investors and the public interest, and to the marketplace as a whole.

The proposed ToM, cToM, AIS, and MOR market data products facilitate transactions in securities, remove impediments to and perfect the mechanisms of a free and open market and a national market system by enhancing the subscriber's ability to make decisions on trading strategy and by providing data which should help bring about such decisions in a timely manner to the protection of investors and the public interest. The market data provided by ToM, cToM, AIS and MOR removes impediments to, and is designed to further perfect, the mechanisms of a free and open market and a national market system by making the MIAX Emerald market more transparent and accessible to market participants making routing decisions concerning their options orders. The Exchange notes that the data provided on each of these data products are similar to and provide the same data as provided by data products of MIAX Options with respect

to options traded on that exchange.<sup>12</sup> The Exchange believes that it is in the public interest to make similar information available with respect to options traded on MIAX Emerald.

The proposed ToM, cToM, AIS, and MOR market data products are also designed to protect investors and the public interest by providing data to subscribers that is already currently available on other competing exchanges which are similar to MIAX Emerald<sup>13</sup> and will enable MIAX Emerald to compete with such other exchanges, thereby offering market participants with additional data in order to seek the market center with the best price and the most liquidity on which to execute their transactions, all to the benefit of investors and the public interest, and to the marketplace as a whole.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. On the contrary, the Exchange believes that the new market data products will enhance competition in the U.S. options markets by providing users of MIAX Emerald market data products that are similar to that which are currently provided on other competing options exchanges.<sup>14</sup>

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>12</sup> See supra notes 5, 6, 7, and 8.

<sup>13</sup> Nasdaq GEMX, LLC ("GEMX") is a maker-taker pricing model exchange similar to MIAX Emerald and has similar data products to ToM and MOR available to GEMX users, including the Nasdaq GEMX Top Quote Feed and Nasdaq GEMX Order Feed. See Nasdaq GEMX Options 7, Pricing Schedule, Section 7, Market Data.

<sup>14</sup> Id.



### 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 after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act<sup>15</sup> and Rule 19b-4(f)(6)<sup>16</sup> thereunder.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days from the date of filing. However, Rule 19b-4(f)(6)(iii)<sup>17</sup> 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 asked the Commission to waive the 30-day operative delay. The Exchange states that waiver of the operative delay will enable the Exchange to make the ToM, cToM, AIS, and MOR market data products available to subscribers at the time of the launch of trading on the Exchange, which is scheduled for March 1, 2019.<sup>18</sup> The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public

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

<sup>16</sup> 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.

<sup>17</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>18</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.)

interest and hereby waives the 30-day operative delay and designates the proposal operative on March 1, 2019.<sup>19</sup>

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-2019-09 on the subject line.

##### Paper comments:

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

All submissions should refer to File Number SR-EMERALD-2019-09. 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>19</sup> 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).

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. All submissions should refer to File Number SR-EMERALD-2019-09 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>20</sup>

Eduardo A. Aleman  
Deputy Secretary

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<sup>20</sup> 17 CFR 200.30-3(a)(12).