

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 42	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - 2021 - * 09	Amendment No. (req. for Amendments *)
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Filing by MIAX Emerald, LLC  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input checked="" type="checkbox"/>	Section 19(b)(3)(A) * <input type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
			Rule		
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>
Section 3C(b)(2) * <input type="checkbox"/>	

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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**Description**

Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

Adopt Exchange Rule 531, Reports, to provide for the new "Liquidity Taker Event Report"

**Contact Information**

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * Chris	Last Name * Solgan
Title * Vice President, Senior Counsel	
E-mail * csolgan@miami-holdings.com	
Telephone * (609) 897-8494	Fax

**Signature**

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title \*)

Date 03/05/2021	Vice President, Senior Counsel
By Chris Solgan <small>(Name *)</small>	

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

**Form 19b-4 Information \***

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

**1. Text of Proposed Rule Change**

(a) MIAX Emerald, LLC (“MIAX Emerald” or “Exchange”), pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> proposes to adopt Exchange Rule 531(a) to provide for the new “Liquidity Taker Event Report”.

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1. The proposed amendment to the Exchange’s rules is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

**2. Procedures of the Self-Regulatory Organization**

The proposed rule change was approved by the Chief Executive Officer of the Exchange or his designee pursuant to authority delegated by the MIAX Emerald Board of Directors of the Exchange on January 28, 2021. Exchange staff will advise the Board of Directors of any action taken pursuant to delegated authority. No other action by the Exchange is necessary for the filing of the proposed rule change.

Questions and comments on the proposed rule change may be directed to Chris Solgan, Vice President and Senior Counsel, at (609) 897-8494.

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

The Exchange proposes to adopt Exchange Rule 531(a) to provide for the new “Liquidity

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

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

Taker Event Report” (the “Report”). The Report is an optional product<sup>3</sup> available to Members.<sup>4</sup> Currently, the Exchange provides real-time prices and analytics in the marketplace. The Exchange believes the additional data points from the matching engine outlined below may help Members gain a better understanding about their interactions with the Exchange. The Exchange believes the Report will provide Members with an opportunity to learn more about better opportunities to access liquidity and receive better execution rates. The proposed Report will increase transparency and democratize information so that all firms that subscribe to the Report have access to the same information on an equal basis, even for firms that do not have the appropriate resources to generate a similar report regarding interactions with the Exchange. None of the components of the proposed Report include real-time market data.

Members generally would use a liquidity accessing order if there is a high probability that it will execute against an order resting on the Exchange’s Book.<sup>5</sup> The proposed Report would identify by how much time an order that may have been marketable missed an execution. The proposed Report will provide greater visibility into the missed trading execution, which will allow Members to optimize their models and trading patterns to yield better execution results.

The proposed Report will be a Member-specific report and will help Members to better understand by how much time a particular order missed executing against a specific resting order, thus allowing that Member to determine whether it wants to invest in the necessary

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<sup>3</sup> The Exchange intends to submit a separate filing with the Commission pursuant to Section 19(b)(1) to propose fees for the Liquidity Taker Event Report.

<sup>4</sup> 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.

<sup>5</sup> The term “Book” means the electronic book of buy and sell orders and quotes maintained by the System. See Exchange Rule 100. The term “System” means the automated trading system used by the Exchange for the trading of securities. See id.

resources and technology to mitigate missed executions against certain resting orders on the Exchange's Book. For example, Member A submits an order that is posted to the Book and then Member B enters a marketable order to execute against Member A's resting order. Immediately thereafter, Member C sends a marketable order to execute against Member A's resting Order. Because Member B's order is received by the Exchange before Member C's order, Member B's order executes against Member A's resting order. The proposed Report would provide Member C the data points necessary for that firm to calculate by how much time they missed executing against Member A's resting order. The Exchange proposes to provide the Report on a T+1 basis. As further described below, the Report will be specific and tailored to the Member that is subscribed to the Report and any data included in the Report that relates to a Member other than the Member receiving the Report will be anonymized.

The Exchange proposes to provide the Report in response to Member demand for data concerning the timeliness of their incoming orders and executions against resting orders. Members have periodically requested from the Exchange's trading operations personnel information concerning the timeliness of their incoming orders and efficacy of their attempts to execute against resting liquidity on the Exchange's Book. The purpose of the Report is to provide Members the necessary data in a standardized format on a T+1 basis to those that subscribe to the Report on an equal basis.<sup>6</sup>

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<sup>6</sup> The proposed Report is based on a similar report provided by the NASDAQ Stock Market LLC ("NASDAQ") for equity securities called the Missed Opportunity – Latency report as part of its NASDAQ Trader Insights offering. See NASDAQ Equity Section 7, Rule 146(a)(2). See also Securities Exchange Act Release No. 78886 (September 20, 2016), 81 FR 66113 (September 26, 2016) (SR-NASDAQ-2016-101) (Order Granting Approval of Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, To Add NASDAQ Rule 7046 (Nasdaq Trading Insights)) ("NASDAQ Approval Order"). NASDAQ later renumbered Rule 7046 as Equity Section 7, Rule 146. See Securities Exchange Act Release No. 84684 (November 29, 2018), 83 FR 62936 (December 6,

Proposed Exchange Rule 531(a) would provide that the Report is a daily report that provides a Member (“Recipient Member”) with its liquidity response time details for executions of an order resting on the Book, where that Recipient Member attempted to execute against such resting order within a certain timeframe.

### Report Content

Paragraph (a)(1) of Rule 531 would describe the content of the Report and delineate which information would be provided regarding the resting order,<sup>7</sup> the response that successfully executed against the resting order, and the response submitted by the Recipient Member that missed executing against the resting order. It is important to note that the content of the Report will be specific to the Recipient Member and the Report will not include any information related to any Member other than the Recipient Member. The Exchange will restrict all other market participants, including the Recipient Member, from receiving another market participant’s data.

*Resting Order Information.* Rule 531(a)(1)(i) would provide that the following information would be included in the Report regarding the resting order: (A) the time the resting order was received by the Exchange;<sup>8</sup> (B) symbol;<sup>9</sup> (C) order reference number, which is a

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2018) (SR-NASDAQ-2018-098). See also the CME Group, Inc.’s Time and Sale report. [https://www.cmegroup.com/trading/about-time-sales.html#:~:text=CME%20Globex%20Options\),.CME%20Group's%20Time%20%26%20Sales%20report%20provides%20the%20price%20and%20time,calendar%20date\)%20of%20the%20transaction.&text=A%20zero%20volume%20represents%20an%20indicative%20price.,-The%20Indicator%20column](https://www.cmegroup.com/trading/about-time-sales.html#:~:text=CME%20Globex%20Options),.CME%20Group's%20Time%20%26%20Sales%20report%20provides%20the%20price%20and%20time,calendar%20date)%20of%20the%20transaction.&text=A%20zero%20volume%20represents%20an%20indicative%20price.,-The%20Indicator%20column)

<sup>7</sup> Only displayed orders will be included in the Report. The Exchange notes that it does not currently offer any non-displayed orders types on its options trading platform.

<sup>8</sup> This information is also included in the NASDAQ report. See Nasdaq Approval Order at note 12, supra note 6. The time the Exchange received the resting order would be in nanoseconds and is the time the resting order was received by the Exchange’s System.

<sup>9</sup> This information is also included in the NASDAQ report. See id.

unique reference number assigned to a new order at the time of receipt;<sup>10</sup> (D) whether the Recipient Member is an Affiliate<sup>11</sup> of the Member that entered the resting order<sup>12</sup>; (E) origin type (e.g., Priority Customer,<sup>13</sup> Market Maker<sup>14</sup>); (F) side (buy or sell);<sup>15</sup> and (G) displayed price and size of the resting order.<sup>16</sup>

*Execution Information.* Rule 531(a)(1)(ii) would provide that the following information would be included in the Report regarding the execution of the resting order: (A) the EBBO<sup>17</sup> at

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<sup>10</sup> This information is also included in the NASDAQ report. See id.

<sup>11</sup> The term “affiliate” of or person “affiliated with” another person means a person who, directly, or indirectly, controls, is controlled by, or is under common control with, such other person. See Exchange Rule 100.

<sup>12</sup> The Report will simply indicate whether the Recipient Member is Affiliate of the Member that entered the resting order and not include any other information that may indicate the identity of the Member that entered the resting order.

<sup>13</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). The number of orders shall be counted in accordance with Interpretation and Policy .01 to Exchange Rule 100. See Exchange Rule 100.

<sup>14</sup> The term “Market Maker” refers to “Lead Market Makers”, “Primary Lead Market Makers” and “Registered Market Makers” collectively. See Exchange Rule 100.

<sup>15</sup> This information is also included in the NASDAQ report. See Nasdaq Approval Order at note 12, supra note 6.

<sup>16</sup> This information is also included in the NASDAQ Report. See id. The Exchange notes that the displayed price and size are also disseminated via the Exchange’s proprietary data feeds and the Options Price Reporting Authority (“OPRA”). The Exchange also notes that the displayed price of the resting order may be different than the ultimate execution price. This may occur when a resting order is displayed and ranked at different prices upon entry to avoid a locked or crossed market.

<sup>17</sup> The term “EBBO” means the best bid or offer on the Exchange. See Exchange Rule 100.

the time of execution;<sup>18</sup> (B) the ABBO<sup>19</sup> at the time of execution;<sup>20</sup> (C) the time first response that executes against the resting order was received by the Exchange and the size of the execution and type of the response;<sup>21</sup> (D) the time difference between the time the resting order was received by the Exchange and the time the first response that executes against the resting order was received by the Exchange;<sup>22</sup> and (E) whether the response was entered by the Recipient Member. If the resting order executes against multiple contra-side responses, only the EBBO and ABBO at the time of the execution against the first response will be included.

*Recipient Member's Response Information.* Rule 531(a)(1)(iii) would provide that the following information would be included in the Report regarding response(s) sent by the Recipient Member: (A) Recipient Member identifier; (B) the time difference between the time the first response that executes against the resting order was received by the Exchange and the time of each response sent by the Recipient Member, regardless of whether it executed or not;<sup>23</sup>

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<sup>18</sup> Exchange Rule 531(a)(1)(ii)(B) would further provide that if the resting order executes against multiple contra-side responses, only the EBBO at the time of the execution against the first response will be included.

<sup>19</sup> The term "ABBO" or "Away Best Bid or Offer" means the best bid(s) or offer(s) disseminated by other Eligible Exchanges (defined in Exchange Rule 1400(g)) and calculated by the Exchange based on market information received by the Exchange from OPRA. See Exchange Rule 100.

<sup>20</sup> Exchange Rule 531(a)(1)(ii)(A) would further provide that if the resting order executes against multiple contra-side responses, only the ABBO at the time of the execution against the first response will be included.

<sup>21</sup> This information is also included in the NASDAQ report. See Nasdaq Approval Order at note 12, supra note 6. The time the Exchange received the response order would be in nanoseconds and would be the time the response was received by the Exchange's network, which is before the time the response would be received by the System.

<sup>22</sup> The time difference would be provided in nanoseconds. This information is also included in the NASDAQ report. See Nasdaq Approval Order at note 12, supra note 6.

<sup>23</sup> This information is also included in the NASDAQ report. See Nasdaq Approval Order at note 12, supra note 6. For purposes of calculating this duration of time, the Exchange will use the time the resting order and the Recipient Member's response(s) is received by

(C) size and type of each response submitted by Recipient Member; and (D) response reference number, which is a unique reference number attached to the response by the Recipient Member.

#### Timeframe for Data Included in Report

Paragraph (a)(2) of Rule 531 would provide that the Report would include the data set forth under Rule 531(a)(1) described above for executions and contra-side responses that occurred within 200 microseconds of the time the resting order was received by the Exchange.

#### Scope of Data Included in the Report

Paragraph (a)(3) of Rule 531 would provide that the Report will only include trading data related to the Recipient Member and, subject to the proposed paragraph (4) of Rule 531(a) described below, will not include any other Member's trading data other than that listed in paragraphs (1)(i) and (ii) of Exchange Rule 531(a) described above.<sup>24</sup>

#### Historical Data

Paragraph (a)(4) of Rule 531 would specify that the Report will contain historical data from the prior trading day and will be available after the end of the trading day, generally on a T+1 basis.

#### b. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of

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the Exchange's network, both of which would be before the order and response(s) would be received by the System. This time difference would be provided in nanoseconds.

<sup>24</sup> The scope of information included in the Report is similar to the NASDAQ report in that both NASDAQ's report and the proposed Report do not include information related to the any Member other than the Recipient Member. See Nasdaq Approval Order at note 13, supra note 6.

Section 6(b) of the Act.<sup>25</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>26</sup> requirements that the rules of an exchange be 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 mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. This proposal is in keeping with those principles in that it promotes increased transparency through the dissemination of the optional Report to those interested in subscribing to receive the data. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>27</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes the proposed Report will serve 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 protect investors and the public interest because it will benefit investors by facilitating their prompt access to the value added information that is included in the proposed Report. The Report will allow Members to access information regarding their trading activity that they may utilize to evaluate their own trading behavior and order interactions.

The proposed Report is designed for Members that are interested in gaining insight into

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<sup>25</sup> 15 U.S.C. 78f(b).

<sup>26</sup> 15 U.S.C. 78f(b)(5).

<sup>27</sup> Id.

latency in connection with orders that failed to execute against an order resting on the Exchange's Book by providing those Members data to analyze by how much time their order may have missed an execution against a contra-side order resting on the Book. The Exchange believes that providing this optional latency data to interested Members is consistent with facilitating transactions in securities, removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest because it provides greater visibility into the latency of Members' incoming orders. Members may use this data to optimize their models and trading patterns in an effort to yield better execution results by calculating by how much time their order may have missed an execution.

The Report generally contains three buckets of information. The first two buckets include information about the resting order and the execution of the resting order. This information is generally available from other public sources, such as OPRA and the Exchange's proprietary data feeds, or is similar to information included in a report offered by another exchange. For example, OPRA provides bids, offers, and consolidated last sale and quotation information for options trading on all national securities exchanges, including the Exchange. In addition, the Exchange offers the Top of Market ("ToM") feed which provides real-time quote and last sale information for all displayed orders on the Book.<sup>28</sup>

Specifically, the first bucket of information contained in the Report for the resting order includes the time the resting order was received by the Exchange, the symbol, unique reference

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<sup>28</sup> See Securities Exchange Release 79913 (February 1, 2017), 82 FR 9617 (February 7, 2017) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Establish the MIAX PEARL Top of Market ("ToM") and MIAX PEARL Liquidity Feed ("PLF") Data Products).

number assigned at the time of receipt, side (buy or sell), and the displayed price and size of the resting order. Each of these data points are also included in the report of another exchange that was previously approved by the Commission.<sup>29</sup> Further, the symbol, origin type, side (buy or sell), and displayed price and size are also available either via OPRA or the Exchange's proprietary data feeds. The first bucket of information also indicates whether the Recipient Member is an Affiliate of the Member that entered the resting order. This data field will not indicate the identity of the Member that entered the resting order and would simply allow the Recipient Member to better understand the scenarios in which it may execute against the orders of its Affiliates.<sup>30</sup>

The second bucket of information contained in the Report regards the execution of the resting order and includes the EBBO and ABBO at the time of execution. These data points are also available either via OPRA or the Exchange's proprietary data feeds. The second bucket of information will also indicate whether the response was entered by the Recipient Member. This data point is simply provided as a convenience. If not entered by the Recipient Member, this data point will be left blank so as not to include any identifying information about other Member activity. The second bucket of information also includes the size, time and type of first response that executes against the resting order; as well as the time difference between the time the resting order and first response that executes against the resting order are received by the Exchange. These data points would assist the Recipient Member in analyzing by how much time their order may have missed an execution against a contra-side order resting on the Book. These data points

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<sup>29</sup> This information is also included in the NASDAQ report. See Nasdaq Approval Order at note 12, supra note 6.

<sup>30</sup> The Exchange's surveils to monitor for abhorrent behavior related to internalized trades and identify potential wash sales.

are also included in the report of another exchange that was previously approved by the Commission.<sup>31</sup>

The third bucket of information is about the Recipient Member's response(s) and the time their response(s) is received by the Exchange. This includes the time difference between the time the first response that executes against the resting order was received by the Exchange and the time of each response sent by the Recipient Member, regardless of whether it executed or not. As above, this data point would assist the Recipient Member in analyzing by how much time their order may have missed an execution against a contra-side order resting on the Book. This data point is also included in the report of another exchange that was previously approved by the Commission.<sup>32</sup> This bucket would also include the size and type of each response submitted by the Recipient Member, the Recipient Member identifier, and a response reference number which is selected by the Recipient Member. Each of these data point are unique to the Recipient Member and should already be known by Recipient Member even if not included in the Report.

As mentioned above, at least one other exchange currently offers a similar trading related report that has been reviewed and approved by the Commission. Specifically, NASDAQ provides the Missed Opportunity – Latency report as part of its NASDAQ Trader Insights offering.<sup>33</sup> NASDAQ's Missed Opportunity – Latency report, like the proposed Report, identifies by how much time a marketable order missed executing against a resting order, similar

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<sup>31</sup> This information is also included in the NASDAQ report. See Nasdaq Approval Order at note 12, supra note 6.

<sup>32</sup> This information is also included in the NASDAQ report. See Nasdaq Approval Order at note 12, supra note 6.

<sup>33</sup> See NASDAQ Approval Order supra note 6.

to the third bucket of information provided in the Report and described above. Both the proposed Report and NASDAQ's Missed Opportunity – Latency report are both provided on a T+1 basis and include data specific to one Member, and only that Member would receive the report.<sup>34</sup> In addition, both the proposed Report and NASDAQ's Missed Opportunity – Latency report are intended to provide the Recipient Member with the time duration by which the order entered by the Recipient Member missed an execution. Both the Exchange and NASDAQ restrict all other market participants, including the Recipient Member, from receiving another market participant's data. As described above throughout the proposal, the proposed Report and NASDAQ's Missed Opportunity – Latency report both include the following information:

- The time a resting order was received by the Exchange
- Symbol
- Order reference number (unique reference number assigned to a new order at the time of receipt)
- Side (buy or sell)
- Displayed price and size of the resting order
- Time first response that executes against the resting order was received by the Exchange and the size of the execution and type of the response
- Time difference between the time the resting order was received by the Exchange and the time the first response that executes against the resting order was received by the Exchange
- Time difference between the time the first response that executes against the resting order was received by the Exchange and the time of each response sent by the Recipient Member, regardless of whether it executed or not

The proposed Report includes that following information that is not included in

NASDAQ's Missed Opportunity – Latency report:

- Whether the Recipient Member is an Affiliate of the Member that entered the resting order.
- Origin type (e.g., Priority Customer, Market Maker). This difference is immaterial as this data point is being provided as a convenience and this data point is also available

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<sup>34</sup>

Id.

- either via OPRA or the Exchange's proprietary data feeds.
- EBBO at the time of the execution. This difference is immaterial as this data point is being provided as a convenience and this data point is also available either via OPRA or the Exchange's proprietary data feeds.
  - ABBO at the time of the execution. This difference is immaterial as this data point is being provided as a convenience and this data point is also available either via OPRA or the Exchange's proprietary data feeds.
  - Whether response was entered by the Recipient Member. As stated above, this data point is simply provided as a convenience to the Recipient Member. If not entered by the Recipient Member, this data point will be left blank so as not to include any identifying information about other Member activity.
  - Recipient Member identifier. This difference is not material because this data point is being provided as a convenience would be known to the Recipient Member even if not included in the Report.
  - Size and type of each response submitted by the Recipient Member. This difference is not material because this data point is being provided as a convenience would be known to the Recipient Member even if not included in the Report.
  - Response reference number. The Exchange believe this is not a material difference since it this is a unique reference number not assigned by the Exchange, but rather attached to response by the Recipient Member themselves and would be known to the Recipient Member even if not included in the Report.

As illustrated above, the proposed Report and NASDAQ's Missed Opportunity – Latency Report is substantially similar and includes a number of the same data elements designed to assist Members in better understanding their trading activity on the Exchange and augment their trading strategies to improve their execution opportunities. Each of these above differences are immaterial because the data point is available via another source and is being provided as a convenience to the Recipient Member when analyzing the Report and intended to make the Report more comprehensive and easier to understand.

One additional difference between the proposed Report and NASDAQ's Missed Opportunity – Latency report is unrelated to the content of the Report, but is related to the type of security the report covers. The proposed Report would cover options trading on the Exchange while NASDAQ's Missed Opportunity – Latency report covers equity securities. The Exchange

believes this difference is of no consequence as both reports are intended to serve the same purpose – providing firms with an opportunity to learn more about when they may have better opportunities to access liquidity and to receive better execution rates. The infrastructure by which a market participant seek to access displayed liquidity on either an equity or options exchange is similar. Liquidity seeking orders on both equity and options exchanges would access the exchanges’ systems in similar manners through the use of ports and gateways. Both reports provide data regarding attempts to access liquidity and both reports would be of no value to market participants seeking to access liquidity in dark pools or other off-exchange venues that are present in the equities market that do not provide for displayed orders. Such off exchange venues are not present in the options markets. The value of such a report is only present in the displayed markets for both options and equities trading and, therefore, the Exchange believes the proposed Report presents the same utility and benefits in the options market as the NASDAQ report does today for equities.

In approving NASDAQ’s Missed Opportunity – Latency report, the Commission noted that the report “would increase transparency, particularly for Members who may not have the expertise to generate the same information.”<sup>35</sup> For the reasons stated above, the Exchange believes this statement is true regardless of whether the Recipient Member trades equities or options. The Exchange’s proposed Report would achieve the same goal for Members seeking to better understand the efficacy of their incoming orders. Further, the proposed Report promotes just and equitable principles of trade because, like NASDAQ’s report, it will increase transparency and democratize information so that all firms may elect to subscribe to the Report

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<sup>35</sup> See Securities Exchange Act Release No. 78886 (September 20, 2016), 81 FR 66113, 66114 (September 26, 2016).

even though some firms may not have the appropriate resources to generate a similar report themselves.

The Exchange proposes to provide the Report on a voluntary basis and no Member will be required to subscribe to the Report. The Exchange notes that there is no rule or regulation that requires the Exchange to produce, or that a Member elect to receive, the Report. It is entirely a business decision of each Member to subscribe to the Report. The Exchange proposes to offer the Report as a convenience to Members to provide them with additional information regarding trading activity on the Exchange on a delayed basis after the close of regular trading hours. A Member that chooses to subscribe to the Report may discontinue receiving the Report at any time if that Member determines that the information contained in the Report is no longer useful.

In summary, the proposed Report will help to protect a free and open market by providing additional data (offered on an optional basis) to the marketplace and by providing investors with greater choices.<sup>36</sup> Additionally, the proposal would not permit unfair discrimination because the proposed Report will be available to all Exchange Members.

#### **4. 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, as amended. The Exchange believes that the proposed Report will enhance competition<sup>37</sup> by providing a new option for receiving market data to Members. The proposed Report will also

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<sup>36</sup> See Sec. Indus. Fin. Mkts. Ass'n (SIFMA), Initial Decision Release No. 1015, 2016 SEC LEXIS 2278 (ALJ June 1, 2016) (finding the existence of vigorous competition with respect to non-core market data).

<sup>37</sup> Id.

further enhance competition between exchanges by allowing the Exchange to expand its product offerings to include a report similar to that currently offered by NASDAQ.<sup>38</sup>

In this instance, the proposed rule change to offer the optional Report is in response to Member interest and requests for such information. The Exchange does not believe the proposed Report will have an inappropriate burden on intra-market competition between Recipient Members and other Members who do not receive the Report. As discussed above, the first two buckets of information included in the Report contain information about the resting order and the execution of the resting order, both of which are generally available to Members that chose not to receive the Report from other public sources, such as OPRA and the Exchange's proprietary data feeds. The third bucket of information is about the Recipient Member's response and the time their response is received by the Exchange, information which the Recipient Member would be able to obtain without receiving the Report. Additionally, some Members may already be able to derive a substantial amount of the same data that is provided by some of the components based on their own executions and algorithms.

In sum, if the proposed Report is unattractive to Members, Members will opt not to receive it. Accordingly, the Exchange does not believe that the proposed change will impair the ability of Members or competing order execution venues to maintain their competitive standing in the financial markets.

**5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others**

No written comments were either solicited or received.

**6. Extension of Time Period for Commission Action**

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<sup>38</sup> See NASDAQ Equity Section 7, Rule 146(a)(2).

The Exchange does not consent to an extension of the time period for Commission action.

7. **Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)**

Not applicable.

8. **Proposed Rule Change Based on rules of Another Self-Regulatory Organization or of the Commission**

The proposed rule change is based on NASDAQ Equity Section 7, Rule 146(a)(2).<sup>39</sup> NASDAQ's Missed Opportunity – Latency report, like the proposed Report, identifies by how much time a marketable order missed executing against a resting order, similar to the third bucket of information provided in the Report and described above. Both the proposed Report and NASDAQ's Missed Opportunity – Latency report are both provided on a T+1 basis and include data specific to one Member, and only that Member would receive the report.<sup>40</sup> Both the Exchange and NASDAQ restrict all other market participants, including the Recipient Member, from receiving another market participant's data.

The proposed Report and NASDAQ's Missed Opportunity – Latency report both include the following information:

- The time a resting order was received by the Exchange
- Symbol
- Order reference number (unique reference number assigned to a new order at the time of receipt)
- Side (buy or sell)
- Displayed price and size of the resting order
- Time first response that executes against the resting order was received by the Exchange and the size of the execution and type of the response
- Time difference between the time the resting order was received by the Exchange and

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<sup>39</sup> Id.

<sup>40</sup> See NASDAQ Approval Order, supra note 6.

- the time the first response that executes against the resting order was received by the Exchange
- Time difference between the time the first response that executes against the resting order was received by the Exchange and the time of each response sent by the Recipient Member, regardless of whether it executed or not

The proposed Report includes that following information that is not included in

NASDAQ's Missed Opportunity – Latency report:

- Whether the Recipient Member is an Affiliate of the Member that entered the resting order.
- Origin type (e.g., Priority Customer, Market Maker). This difference is immaterial as this data point is being provided as a convenience and this data point is also available either via OPRA or the Exchange's proprietary data feeds.
- EBBO at the time of the execution. This difference is immaterial as this data point is being provided as a convenience and this data point is also available either via OPRA or the Exchange's proprietary data feeds.
- ABBO at the time of the execution. This difference is immaterial as this data point is being provided as a convenience and this data point is also available either via OPRA or the Exchange's proprietary data feeds.
- Whether response was entered by the Recipient Member. As stated above, this data point is simply provided as a convenience to the Recipient Member. If not entered by the Recipient Member, this data point will be left blank so as not to include any identifying information about other Member activity.
- Recipient Member identifier. This difference is not material because this data point is being provided as a convenience would be known to the Recipient Member even if not included in the Report.
- Size and type of each response submitted by the Recipient Member. This difference is not material because this data point is being provided as a convenience would be known to the Recipient Member even if not included in the Report.
- Response reference number. The Exchange believe this is not a material difference since it this is a unique reference number not assigned by the Exchange, but rather attached to response by the Recipient Member themselves and would be known to the Recipient Member even if not included in the Report.

As illustrated above, the proposed Report and NASDAQ's Missed Opportunity – Latency Report are substantially similar and include a number of the same data elements designed to assist Members in better understanding their trading activity on the Exchange and augment their

trading strategies to improve their execution opportunities. The Exchange believes that each of these differences are immaterial because the data point is available via another source and is being provided as a convenience to the Recipient Member when analyzing the Report and intended to make the Report more comprehensive and easier to understand.

One additional difference between the proposed Report and NASDAQ's Missed Opportunity – Latency report is unrelated to the content of the Report, but rather is related to the type of security the report covers. The proposed Report would cover options trading on the Exchange while NASDAQ's Missed Opportunity – Latency report covers equity securities. This difference is of no consequence as both reports are intended to serve the same purpose – providing firms with an opportunity to learn more about when they may have better opportunities to access liquidity and to receive better execution rates. The infrastructure by which a market participant seek to access displayed liquidity on either an equity or options exchange is similar. Liquidity seeking orders on both an equity and options exchange would access the exchange's system in similar manners through the use of ports and gateways. Both reports provide data regarding attempts to access liquidity and such a report would be of no value to those seeking to access liquidity in dark pools or other off-exchange venues that are present in the equities market that do not provide for displayed orders. Such off exchange venues are not present in the options markets. The value of such a report is only present in the displayed markets for both options and equities trading and, therefore, the Exchange believes the proposed Report presents the same utility and benefits in the options market as the NASDAQ report does today for equities.

**9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act**

Not applicable.

**10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act**

Not applicable.

11. **Exhibits**

1. Completed notice of proposed rule change for publication in the Federal Register.
5. Text of the proposed rule change.

**EXHIBIT 1**SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. SR-EMERALD-2021-09)

March \_\_, 2021

Self-Regulatory Organizations: Notice of Filing of a Proposed Rule Change by MIAX Emerald, LLC to adopt Exchange Rule 531, Reports, to provide for the new “Liquidity Taker Event Report”

Pursuant to the provisions of 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 March \_\_\_\_, 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 proposes to adopt Exchange Rule 531(a) to provide for the new “Liquidity Taker Event Report”.

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

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

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

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 adopt Exchange Rule 531(a) to provide for the new “Liquidity Taker Event Report” (the “Report”). The Report is an optional product<sup>3</sup> available to Members.<sup>4</sup> Currently, the Exchange provides real-time prices and analytics in the marketplace. The Exchange believes the additional data points from the matching engine outlined below may help Members gain a better understanding about their interactions with the Exchange. The Exchange believes the Report will provide Members with an opportunity to learn more about better opportunities to access liquidity and receive better execution rates. The proposed Report will increase transparency and democratize information so that all firms that subscribe to the Report have access to the same information on an equal basis, even for firms that do not have the appropriate resources to generate a similar report regarding interactions with the Exchange. None of the components of the proposed Report include real-time market data.

Members generally would use a liquidity accessing order if there is a high probability that it will execute against an order resting on the Exchange’s Book.<sup>5</sup> The proposed Report would

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<sup>3</sup> The Exchange intends to submit a separate filing with the Commission pursuant to Section 19(b)(1) to propose fees for the Liquidity Taker Event Report.

<sup>4</sup> 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.

<sup>5</sup> The term “Book” means the electronic book of buy and sell orders and quotes maintained by the System. See Exchange Rule 100. The term “System” means the automated trading system used by the Exchange for the trading of securities. See id.

identify by how much time an order that may have been marketable missed an execution. The proposed Report will provide greater visibility into the missed trading execution, which will allow Members to optimize their models and trading patterns to yield better execution results.

The proposed Report will be a Member-specific report and will help Members to better understand by how much time a particular order missed executing against a specific resting order, thus allowing that Member to determine whether it wants to invest in the necessary resources and technology to mitigate missed executions against certain resting orders on the Exchange's Book. For example, Member A submits an order that is posted to the Book and then Member B enters a marketable order to execute against Member A's resting order. Immediately thereafter, Member C sends a marketable order to execute against Member A's resting Order. Because Member B's order is received by the Exchange before Member C's order, Member B's order executes against Member A's resting order. The proposed Report would provide Member C the data points necessary for that firm to calculate by how much time they missed executing against Member A's resting order. The Exchange proposes to provide the Report on a T+1 basis. As further described below, the Report will be specific and tailored to the Member that is subscribed to the Report and any data included in the Report that relates to a Member other than the Member receiving the Report will be anonymized.

The Exchange proposes to provide the Report in response to Member demand for data concerning the timeliness of their incoming orders and executions against resting orders. Members have periodically requested from the Exchange's trading operations personnel information concerning the timeliness of their incoming orders and efficacy of their attempts to execute against resting liquidity on the Exchange's Book. The purpose of the Report is to provide Members the necessary data in a standardized format on a T+1 basis to those that

subscribe to the Report on an equal basis.<sup>6</sup>

Proposed Exchange Rule 531(a) would provide that the Report is a daily report that provides a Member (“Recipient Member”) with its liquidity response time details for executions of an order resting on the Book, where that Recipient Member attempted to execute against such resting order within a certain timeframe.

#### Report Content

Paragraph (a)(1) of Rule 531 would describe the content of the Report and delineate which information would be provided regarding the resting order,<sup>7</sup> the response that successfully executed against the resting order, and the response submitted by the Recipient Member that missed executing against the resting order. It is important to note that the content of the Report will be specific to the Recipient Member and the Report will not include any information related to any Member other than the Recipient Member. The Exchange will restrict all other market participants, including the Recipient Member, from receiving another market participant’s data.

*Resting Order Information.* Rule 531(a)(1)(i) would provide that the following

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<sup>6</sup> The proposed Report is based on a similar report provided by the NASDAQ Stock Market LLC (“NASDAQ”) for equity securities called the Missed Opportunity – Latency report as part of its NASDAQ Trader Insights offering. See NASDAQ Equity Section 7, Rule 146(a)(2). See also Securities Exchange Act Release No. 78886 (September 20, 2016), 81 FR 66113 (September 26, 2016) (SR-NASDAQ-2016-101) (Order Granting Approval of Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, To Add NASDAQ Rule 7046 (Nasdaq Trading Insights)) (“NASDAQ Approval Order”). NASDAQ later renumbered Rule 7046 as Equity Section 7, Rule 146. See Securities Exchange Act Release No. 84684 (November 29, 2018), 83 FR 62936 (December 6, 2018) (SR-NASDAQ-2018-098). See also the CME Group, Inc.’s Time and Sale report. [https://www.cmegroup.com/trading/about-time-sales.html#:~:text=CME%20Globex%20Options\)-.CME%20Group's%20Time%20%26%20Sales%20report%20provides%20the%20price%20and%20time,calendar%20date\)%20of%20the%20transaction.&text=A%20zero%20volume%20represents%20an%20indicative%20price.,-The%20Indicator%20column](https://www.cmegroup.com/trading/about-time-sales.html#:~:text=CME%20Globex%20Options)-.CME%20Group's%20Time%20%26%20Sales%20report%20provides%20the%20price%20and%20time,calendar%20date)%20of%20the%20transaction.&text=A%20zero%20volume%20represents%20an%20indicative%20price.,-The%20Indicator%20column)

<sup>7</sup> Only displayed orders will be included in the Report. The Exchange notes that it does not currently offer any non-displayed orders types on its options trading platform.

information would be included in the Report regarding the resting order: (A) the time the resting order was received by the Exchange;<sup>8</sup> (B) symbol;<sup>9</sup> (C) order reference number, which is a unique reference number assigned to a new order at the time of receipt;<sup>10</sup> (D) whether the Recipient Member is an Affiliate<sup>11</sup> of the Member that entered the resting order<sup>12</sup>; (E) origin type (e.g., Priority Customer,<sup>13</sup> Market Maker<sup>14</sup>); (F) side (buy or sell);<sup>15</sup> and (G) displayed price and size of the resting order.<sup>16</sup>

*Execution Information.* Rule 531(a)(1)(ii) would provide that the following information

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<sup>8</sup> This information is also included in the NASDAQ report. See Nasdaq Approval Order at note 12, supra note 6. The time the Exchange received the resting order would be in nanoseconds and is the time the resting order was received by the Exchange's System.

<sup>9</sup> This information is also included in the NASDAQ report. See id.

<sup>10</sup> This information is also included in the NASDAQ report. See id.

<sup>11</sup> The term "affiliate" of or person "affiliated with" another person means a person who, directly, or indirectly, controls, is controlled by, or is under common control with, such other person. See Exchange Rule 100.

<sup>12</sup> The Report will simply indicate whether the Recipient Member is Affiliate of the Member that entered the resting order and not include any other information that may indicate the identity of the Member that entered the resting order.

<sup>13</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). The number of orders shall be counted in accordance with Interpretation and Policy .01 to Exchange Rule 100. See Exchange Rule 100.

<sup>14</sup> The term "Market Maker" refers to "Lead Market Makers", "Primary Lead Market Makers" and "Registered Market Makers" collectively. See Exchange Rule 100.

<sup>15</sup> This information is also included in the NASDAQ report. See Nasdaq Approval Order at note 12, supra note 6.

<sup>16</sup> This information is also included in the NASDAQ Report. See id. The Exchange notes that the displayed price and size are also disseminated via the Exchange's proprietary data feeds and the Options Price Reporting Authority ("OPRA"). The Exchange also notes that the displayed price of the resting order may be different than the ultimate execution price. This may occur when a resting order is displayed and ranked at different prices upon entry to avoid a locked or crossed market.

would be included in the Report regarding the execution of the resting order: (A) the EBBO<sup>17</sup> at the time of execution;<sup>18</sup> (B) the ABBO<sup>19</sup> at the time of execution;<sup>20</sup> (C) the time first response that executes against the resting order was received by the Exchange and the size of the execution and type of the response;<sup>21</sup> (D) the time difference between the time the resting order was received by the Exchange and the time the first response that executes against the resting order was received by the Exchange;<sup>22</sup> and (E) whether the response was entered by the Recipient Member. If the resting order executes against multiple contra-side responses, only the EBBO and ABBO at the time of the execution against the first response will be included.

*Recipient Member's Response Information.* Rule 531(a)(1)(iii) would provide that the following information would be included in the Report regarding response(s) sent by the Recipient Member: (A) Recipient Member identifier; (B) the time difference between the time the first response that executes against the resting order was received by the Exchange and the

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<sup>17</sup> The term "EBBO" means the best bid or offer on the Exchange. See Exchange Rule 100.

<sup>18</sup> Exchange Rule 531(a)(1)(ii)(B) would further provide that if the resting order executes against multiple contra-side responses, only the EBBO at the time of the execution against the first response will be included.

<sup>19</sup> The term "ABBO" or "Away Best Bid or Offer" means the best bid(s) or offer(s) disseminated by other Eligible Exchanges (defined in Exchange Rule 1400(g)) and calculated by the Exchange based on market information received by the Exchange from OPRA. See Exchange Rule 100.

<sup>20</sup> Exchange Rule 531(a)(1)(ii)(A) would further provide that if the resting order executes against multiple contra-side responses, only the ABBO at the time of the execution against the first response will be included.

<sup>21</sup> This information is also included in the NASDAQ report. See Nasdaq Approval Order at note 12, supra note 6. The time the Exchange received the response order would be in nanoseconds and would be the time the response was received by the Exchange's network, which is before the time the response would be received by the System.

<sup>22</sup> The time difference would be provided in nanoseconds. This information is also included in the NASDAQ report. See Nasdaq Approval Order at note 12, supra note 6.

time of each response sent by the Recipient Member, regardless of whether it executed or not;<sup>23</sup> (C) size and type of each response submitted by Recipient Member; and (D) response reference number, which is a unique reference number attached to the response by the Recipient Member.

#### Timeframe for Data Included in Report

Paragraph (a)(2) of Rule 531 would provide that the Report would include the data set forth under Rule 531(a)(1) described above for executions and contra-side responses that occurred within 200 microseconds of the time the resting order was received by the Exchange.

#### Scope of Data Included in the Report

Paragraph (a)(3) of Rule 531 would provide that the Report will only include trading data related to the Recipient Member and, subject to the proposed paragraph (4) of Rule 531(a) described below, will not include any other Member's trading data other than that listed in paragraphs (1)(i) and (ii) of Exchange Rule 531(a) described above.<sup>24</sup>

#### Historical Data

Paragraph (a)(4) of Rule 531 would specify that the Report will contain historical data from the prior trading day and will be available after the end of the trading day, generally on a T+1 basis.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules

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<sup>23</sup> This information is also included in the NASDAQ report. See Nasdaq Approval Order at note 12, supra note 6. For purposes of calculating this duration of time, the Exchange will use the time the resting order and the Recipient Member's response(s) is received by the Exchange's network, both of which would be before the order and response(s) would be received by the System. This time difference would be provided in nanoseconds.

<sup>24</sup> The scope of information included in the Report is similar to the NASDAQ report in that both NASDAQ's report and the proposed Report do not include information related to the any Member other than the Recipient Member. See Nasdaq Approval Order at note 13, supra note 6.

and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>25</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>26</sup> requirements that the rules of an exchange be 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 mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. This proposal is in keeping with those principles in that it promotes increased transparency through the dissemination of the optional Report to those interested in subscribing to receive the data. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>27</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes the proposed Report will serve 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 protect investors and the public interest because it will benefit investors by facilitating their prompt access to the value added information that is included in the proposed Report. The Report will allow Members to access information regarding their trading activity that they may utilize to evaluate their own trading behavior and order interactions.

The proposed Report is designed for Members that are interested in gaining insight into

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<sup>25</sup> 15 U.S.C. 78f(b).

<sup>26</sup> 15 U.S.C. 78f(b)(5).

<sup>27</sup> Id.

latency in connection with orders that failed to execute against an order resting on the Exchange's Book by providing those Members data to analyze by how much time their order may have missed an execution against a contra-side order resting on the Book. The Exchange believes that providing this optional latency data to interested Members is consistent with facilitating transactions in securities, removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest because it provides greater visibility into the latency of Members' incoming orders. Members may use this data to optimize their models and trading patterns in an effort to yield better execution results by calculating by how much time their order may have missed an execution.

The Report generally contains three buckets of information. The first two buckets include information about the resting order and the execution of the resting order. This information is generally available from other public sources, such as OPRA and the Exchange's proprietary data feeds, or is similar to information included in a report offered by another exchange. For example, OPRA provides bids, offers, and consolidated last sale and quotation information for options trading on all national securities exchanges, including the Exchange. In addition, the Exchange offers the Top of Market ("ToM") feed which provides real-time quote and last sale information for all displayed orders on the Book.<sup>28</sup>

Specifically, the first bucket of information contained in the Report for the resting order includes the time the resting order was received by the Exchange, the symbol, unique reference number assigned at the time of receipt, side (buy or sell), and the displayed price and size of the

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<sup>28</sup> See Securities Exchange Release 79913 (February 1, 2017), 82 FR 9617 (February 7, 2017) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Establish the MIAX PEARL Top of Market ("ToM") and MIAX PEARL Liquidity Feed ("PLF") Data Products).

resting order. Each of these data points are also included in the report of another exchange that was previously approved by the Commission.<sup>29</sup> Further, the symbol, origin type, side (buy or sell), and displayed price and size are also available either via OPRA or the Exchange's proprietary data feeds. The first bucket of information also indicates whether the Recipient Member is an Affiliate of the Member that entered the resting order. This data field will not indicate the identity of the Member that entered the resting order and would simply allow the Recipient Member to better understand the scenarios in which it may execute against the orders of its Affiliates.<sup>30</sup>

The second bucket of information contained in the Report regards the execution of the resting order and includes the EBBO and ABBO at the time of execution. These data points are also available either via OPRA or the Exchange's proprietary data feeds. The second bucket of information will also indicate whether the response was entered by the Recipient Member. This data point is simply provided as a convenience. If not entered by the Recipient Member, this data point will be left blank so as not to include any identifying information about other Member activity. The second bucket of information also includes the size, time and type of first response that executes against the resting order; as well as the time difference between the time the resting order and first response that executes against the resting order are received by the Exchange. These data points would assist the Recipient Member in analyzing by how much time their order may have missed an execution against a contra-side order resting on the Book. These data points are also included in the report of another exchange that was previously approved by the

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<sup>29</sup> This information is also included in the NASDAQ report. See Nasdaq Approval Order at note 12, supra note 6.

<sup>30</sup> The Exchange's surveils to monitor for abhorrent behavior related to internalized trades and identify potential wash sales.

Commission.<sup>31</sup>

The third bucket of information is about the Recipient Member's response(s) and the time their response(s) is received by the Exchange. This includes the time difference between the time the first response that executes against the resting order was received by the Exchange and the time of each response sent by the Recipient Member, regardless of whether it executed or not. As above, this data point would assist the Recipient Member in analyzing by how much time their order may have missed an execution against a contra-side order resting on the Book. This data point is also included in the report of another exchange that was previously approved by the Commission.<sup>32</sup> This bucket would also include the size and type of each response submitted by the Recipient Member, the Recipient Member identifier, and a response reference number which is selected by the Recipient Member. Each of these data point are unique to the Recipient Member and should already be known by Recipient Member even if not included in the Report.

As mentioned above, at least one other exchange currently offers a similar trading related report that has been reviewed and approved by the Commission. Specifically, NASDAQ provides the Missed Opportunity – Latency report as part of its NASDAQ Trader Insights offering.<sup>33</sup> NASDAQ's Missed Opportunity – Latency report, like the proposed Report, identifies by how much time a marketable order missed executing against a resting order, similar to the third bucket of information provided in the Report and described above. Both the proposed Report and NASDAQ's Missed Opportunity – Latency report are both provided on a

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<sup>31</sup> This information is also included in the NASDAQ report. See Nasdaq Approval Order at note 12, supra note 6.

<sup>32</sup> This information is also included in the NASDAQ report. See Nasdaq Approval Order at note 12, supra note 6.

<sup>33</sup> See NASDAQ Approval Order supra note 6.

T+1 basis and include data specific to one Member, and only that Member would receive the report.<sup>34</sup> In addition, both the proposed Report and NASDAQ's Missed Opportunity – Latency report are intended to provide the Recipient Member with the time duration by which the order entered by the Recipient Member missed an execution. Both the Exchange and NASDAQ restrict all other market participants, including the Recipient Member, from receiving another market participant's data. As described above throughout the proposal, the proposed Report and NASDAQ's Missed Opportunity – Latency report both include the following information:

- The time a resting order was received by the Exchange
- Symbol
- Order reference number (unique reference number assigned to a new order at the time of receipt)
- Side (buy or sell)
- Displayed price and size of the resting order
- Time first response that executes against the resting order was received by the Exchange and the size of the execution and type of the response
- Time difference between the time the resting order was received by the Exchange and the time the first response that executes against the resting order was received by the Exchange
- Time difference between the time the first response that executes against the resting order was received by the Exchange and the time of each response sent by the Recipient Member, regardless of whether it executed or not

The proposed Report includes that following information that is not included in NASDAQ's Missed Opportunity – Latency report:

- Whether the Recipient Member is an Affiliate of the Member that entered the resting order.
- Origin type (e.g., Priority Customer, Market Maker). This difference is immaterial as this data point is being provided as a convenience and this data point is also available either via OPRA or the Exchange's proprietary data feeds.
- EBBO at the time of the execution. This difference is immaterial as this data point is being provided as a convenience and this data point is also available either via OPRA or the Exchange's proprietary data feeds.

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<sup>34</sup>

Id.

- ABBO at the time of the execution. This difference is immaterial as this data point is being provided as a convenience and this data point is also available either via OPRA or the Exchange's proprietary data feeds.
- Whether response was entered by the Recipient Member. As stated above, this data point is simply provided as a convenience to the Recipient Member. If not entered by the Recipient Member, this data point will be left blank so as not to include any identifying information about other Member activity.
- Recipient Member identifier. This difference is not material because this data point is being provided as a convenience would be known to the Recipient Member even if not included in the Report.
- Size and type of each response submitted by the Recipient Member. This difference is not material because this data point is being provided as a convenience would be known to the Recipient Member even if not included in the Report.
- Response reference number. The Exchange believe this is not a material difference since it this is a unique reference number not assigned by the Exchange, but rather attached to response by the Recipient Member themselves and would be known to the Recipient Member even if not included in the Report.

As illustrated above, the proposed Report and NASDAQ's Missed Opportunity – Latency Report is substantially similar and includes a number of the same data elements designed to assist Members in better understanding their trading activity on the Exchange and augment their trading strategies to improve their execution opportunities. Each of these above differences are immaterial because the data point is available via another source and is being provided as a convenience to the Recipient Member when analyzing the Report and intended to make the Report more comprehensive and easier to understand.

One additional difference between the proposed Report and NASDAQ's Missed Opportunity – Latency report is unrelated to the content of the Report, but is related to the type of security the report covers. The proposed Report would cover options trading on the Exchange while NASDAQ's Missed Opportunity – Latency report covers equity securities. The Exchange believes this difference is of no consequence as both reports are intended to serve the same purpose – providing firms with an opportunity to learn more about when they may have better opportunities to access liquidity and to receive better execution rates. The infrastructure by

which a market participant seek to access displayed liquidity on either an equity or options exchange is similar. Liquidity seeking orders on both equity and options exchanges would access the exchanges' systems in similar manners through the use of ports and gateways. Both reports provide data regarding attempts to access liquidity and both reports would be of no value to market participants seeking to access liquidity in dark pools or other off-exchange venues that are present in the equities market that do not provide for displayed orders. Such off exchange venues are not present in the options markets. The value of such a report is only present in the displayed markets for both options and equities trading and, therefore, the Exchange believes the proposed Report presents the same utility and benefits in the options market as the NASDAQ report does today for equities.

In approving NASDAQ's Missed Opportunity – Latency report, the Commission noted that the report “would increase transparency, particularly for Members who may not have the expertise to generate the same information.”<sup>35</sup> For the reasons stated above, the Exchange believes this statement is true regardless of whether the Recipient Member trades equities or options. The Exchange's proposed Report would achieve the same goal for Members seeking to better understand the efficacy of their incoming orders. Further, the proposed Report promotes just and equitable principles of trade because, like NASDAQ's report, it will increase transparency and democratize information so that all firms may elect to subscribe to the Report even though some firms may not have the appropriate resources to generate a similar report themselves.

The Exchange proposes to provide the Report on a voluntary basis and no Member will be required to subscribe to the Report. The Exchange notes that there is no rule or regulation

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<sup>35</sup> See Securities Exchange Act Release No. 78886 (September 20, 2016), 81 FR 66113, 66114 (September 26, 2016).

that requires the Exchange to produce, or that a Member elect to receive, the Report. It is entirely a business decision of each Member to subscribe to the Report. The Exchange proposes to offer the Report as a convenience to Members to provide them with additional information regarding trading activity on the Exchange on a delayed basis after the close of regular trading hours. A Member that chooses to subscribe to the Report may discontinue receiving the Report at any time if that Member determines that the information contained in the Report is no longer useful.

In summary, the proposed Report will help to protect a free and open market by providing additional data (offered on an optional basis) to the marketplace and by providing investors with greater choices.<sup>36</sup> Additionally, the proposal would not permit unfair discrimination because the proposed Report will be available to all Exchange Members.

**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, as amended. The Exchange believes that the proposed Report will enhance competition<sup>37</sup> by providing a new option for receiving market data to Members. The proposed Report will also further enhance competition between exchanges by allowing the Exchange to expand its product offerings to include a report similar to that currently offered by NASDAQ.<sup>38</sup>

In this instance, the proposed rule change to offer the optional Report is in response to Member interest and requests for such information. The Exchange does not believe the proposed

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<sup>36</sup> See Sec. Indus. Fin. Mkts. Ass'n (SIFMA), Initial Decision Release No. 1015, 2016 SEC LEXIS 2278 (ALJ June 1, 2016) (finding the existence of vigorous competition with respect to non-core market data).

<sup>37</sup> Id.

<sup>38</sup> See NASDAQ Equity Section 7, Rule 146(a)(2).

Report will have an inappropriate burden on intra-market competition between Recipient Members and other Members who do not receive the Report. As discussed above, the first two buckets of information included in the Report contain information about the resting order and the execution of the resting order, both of which are generally available to Members that chose not to receive the Report from other public sources, such as OPRA and the Exchange's proprietary data feeds. The third bucket of information is about the Recipient Member's response and the time their response is received by the Exchange, information which the Recipient Member would be able to obtain without receiving the Report. Additionally, some Members may already be able to derive a substantial amount of the same data that is provided by some of the components based on their own executions and algorithms.

In sum, if the proposed Report is unattractive to Members, Members will opt not to receive it. Accordingly, the Exchange does not believe that the proposed change will impair the ability of Members or competing order execution venues to maintain their competitive standing in the financial markets.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be 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-2021-09 on the subject line.

##### Paper comments:

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

All submissions should refer to File Number SR-EMERALD-2021-09. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F 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; the

Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-EMERALD-2021-09 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>

Vanessa Countryman  
Secretary

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

**EXHIBIT 5**

New text is underlined;  
Deleted text is in [brackets]

**MIAX Emerald, LLC Rules**

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**Rule 531. [Reserved]Reports**

**(a) Liquidity Taker Event Report.** The Liquidity Taker Event Report is a daily report that provides a Member (“Recipient Member”) with its liquidity response time details for executions against an order resting on the Book, where that Recipient Member attempted to execute against such resting order within the timeframe specified under paragraph (2) below.

**(1) Content.** The Liquidity Taker Event Report will include the following information:

**(i) Resting Order.**

**(A) The time a resting order was received by the Exchange.**

**(B) Symbol.**

**(C) Order reference number (unique reference number assigned to a new order at the time of receipt).**

**(D) Whether the Recipient Member is an Affiliate of the Member that entered the resting order.**

**(E) Origin type (e.g., Priority Customer, Market Maker).**

**(F) Side (buy or sell).**

**(G) Displayed price and size of the resting order.**

**(ii) Execution of the Resting Order.**

**(A) EBBO at the time of the execution. If the resting order executes against multiple contra-side responses, only the EBBO at the time of the execution against the first response will be included.**

**(B) ABBO at the time of the execution. If the resting order executes against multiple contra-side responses, only the ABBO at the time of the execution against the first response will be included.**

(C) Time first response that executes against the resting order was received by the Exchange and the size of the execution and type of the response.

(D) Time difference between the time the resting order was received by the Exchange and the time the first response that executes against the resting order was received by the Exchange.

(E) Whether response was entered by the Recipient Member.

**(iii) Response(s) Sent by Recipient Member.**

(A) Recipient Member identifier.

(B) Time difference between the time the first response that executes against the resting order was received by the Exchange and the time of each response sent by the Recipient Member, regardless of whether it executed or not.

(C) Size and type of each response submitted by the Recipient Member.

(D) Response reference number (unique reference number attached to response by the Recipient Member).

(2) **Timeframe.** The Liquidity Taker Event Report will include data listed in paragraph (a)(1) of this Rule 531(a) for executions and contra-side responses that occurred within 200 microseconds of the time the resting order was received by the Exchange.

(3) **Data Scope.** The Liquidity Taker Event Report will only include trading data related to the Recipient Member and will not include any other Member's trading data other than that listed in paragraphs (1)(i) and (ii) of this Rule 531(a).

(4) **Historical Data.** The Liquidity Taker Event Report contains historical data from the previous trading day and will be available after the end of the trading day, generally on a T+1 basis.

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