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Page 1 of \* 24

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549  
Form 19b-4

File No. \* SR 2023 - \* 20

Amendment No. (req. for Amendments \*)

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 type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
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Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	Rule		
			<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input checked="" 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  
Section 806(e)(1) \*

Section 806(e)(2) \*

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934  
Section 3C(b)(2) \*

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

**Description**

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

Proposal to amend the Fee Schedule to modify the Excessive Quoting Fee to provide an exemption.

**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 \* Michael Last Name \* Slade

Title \* AVP, Associate Counsel

E-mail \* mslade@miami-holdings.com

Telephone \* (609) 897-8499 Fax

**Signature**

Pursuant to the requirements of the Securities Exchange of 1934, MIAX Emerald, LLC has duty caused this filing to be signed on its behalf by the undersigned thereunto duty authorized.

Date 07/27/2023 (Title \*)

By Michael Slade AVP, Associate Counsel  
(Name \*)

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

Michael Slade Date: 2023.07.27 10:15:48 -04'00'

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

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

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SR-EMERALD-2023-20 - 19b-4.docx

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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SR-EMERALD-2023-20 - Exhibit 1.do

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 Advanced 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 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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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 Sent As Paper Document

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

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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 Sent As Paper Document

**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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SR-EMERALD-2023-20 - Exhibit 5.doc

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 the 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 amend the MIAX Emerald Options Exchange Fee Schedule (the “Fee Schedule”) to modify the Excessive Quoting Fee.

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1, and a copy of the applicable section of the Fee Schedule is attached hereto as Exhibit 5.

(b) Inapplicable.

(c) Inapplicable.

## 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 on February 2, 2023. 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 changes.

Questions and comments on the proposed rule changes may be directed to Michael Slade, Assistant Vice President, Associate Counsel, (609) 897-8499.

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

a. Purpose

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

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

The Exchange proposes to amend Section 1)c) of the Fee Schedule to add an exemption such that Market Makers<sup>3</sup> would not be assessed the daily Excessive Quoting Fee for the first trading day that they exceed the 3.5 billion inbound quote<sup>4</sup> limit in a rolling 12-month period. The Exchange originally filed this proposal on July 18, 2023 (SR-EMEARLD-2023-17). On July 27, 2023, the Exchange withdrew SR-EMERALD-2023-17 and refiled this proposal.

### Background

The Exchange adopted the Excessive Quoting Fee as a result of a significant upgrade to the MIAX Emerald System<sup>5</sup> network architecture, based on customer demand, which resulted in the Exchange's network environment becoming more transparent and deterministic. Pursuant to the Excessive Quoting Fee, the Exchange will assess a fee of \$10,000 per day to any Market Maker that exceeds 3.5 billion inbound quotes sent to the Exchange on that particular day. In counting the total number of quotes for the purposes of the Excessive Quoting Fee, the Exchange excludes messages that are generated as a result of sending a mass purge message to the Exchange. The 3.5 billion inbound quote limit for the Excessive Quoting Fee resets each trading day.<sup>6</sup>

### Proposal

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<sup>3</sup> The term "Market Maker" refers to "Lead Market Maker" ("LMM"), "Primary Lead Market Maker" ("PLMM") and "Registered Market Maker" ("RMM"), collectively. See the Definitions Section of the Fee Schedule and Exchange Rule 100.

<sup>4</sup> The term "quote" or "quotation" means a bid or offer entered by a Market Maker that is firm and may update the Market Maker's previous quote, if any. The Rules of the Exchange provide for the use of different types of quotes, including Standard quotes and eQuotes, as more fully described in Rule 517. A Market Maker may, at times, choose to have multiple types of quotes active in an individual option. See the Definitions Section of the Fee Schedule.

<sup>5</sup> The term "System" means the automated trading system used by the Exchange for the trading of securities. See Exchange Rule 100.

<sup>6</sup> See Fee Schedule, Section 1)c).

The Exchange proposes to adopt an exemption from the daily Excessive Quoting Fee for the first trading day that a Market Maker would incur such fee in a rolling 12-month period (the “Exemption”). For example, if a Market Maker exceeds 3.5 billion inbound quotes on August 1, 2023, the Exchange will not assess the Excessive Quoting Fee. Following that initial exceeding day, if that same Market Maker exceeds the 3.5 billion inbound quote limit again on any trading day between August 2, 2023 and July 31, 2024, then the Exchange would assess the Excessive Quoting Fee on each of those days. Continuing with this scenario, beginning with August 1, 2024, if that same Market Maker exceeds the 3.5 billion inbound quote limit on September 1, 2024, the Exchange would not assess the Excessive Quoting Fee for that day because a new rolling 12-month period started. Following that exceeding day of September 1, 2024, if that same Market Maker exceeds the 3.5 billion inbound quote limit again on any trading day between September 2, 2024 and August 31, 2025, then the Exchange would assess the Excessive Quoting Fee on each of those days.

The purpose of the proposed Exemption is intended to provide one-time relief to Market Makers from the Excessive Quoting Fee during a 12-month period. For example, increased volatility in the market place, an increase in the number of options products quoted on the Exchange, Market Makers testing new algorithms or technology, or some combination of those factors, among others, may impact the number of quotes sent by a Market Maker on a particular trading day, resulting in that Market Maker potentially exceeding the 3.5 billion inbound quote limit. The proposed Exemption would provide one-time relief in those types of circumstances. The Exchange believes the proposed Exemption will not undermine the purpose of the Excessive Quoting Fee, but will continue to balance the interests of Market Makers sending quotes to the Exchange, pursuant to their quoting obligations and quoting strategies, while ensuring that

Market Makers do not over utilize the Exchange's System by sending excessive numbers of quotes to the potential detriment of other Members<sup>7</sup> of the Exchange.

The proposal contemplates that a Market Maker would have to exceed the high threshold of 3.5 billion inbound quotes on more than one trading day in a rolling 12-month period before that Market Maker would be charged the Excessive Quoting Fee (with the Exemption providing relief once during a rolling 12-month period). The Exchange believes the proposed Exemption is similar to the exemption currently offered by the options markets for NYSE Arca, Inc. ("NYSE Arca Options") and NYSE American LLC ("NYSE American Options") for those exchanges' "Ratio Threshold Fee."<sup>8</sup>

The Excessive Quoting Fee was not intended to be a source of revenue for the Exchange, as the Exchange noted in its proposals to adopt the Excessive Quoting Fee and increase the inbound quote limit.<sup>9</sup> Rather, the Excessive Quoting Fee was designed to ensure that Market Makers do not over utilize the Exchange's System by sending excessive numbers of quotes to the Exchange, potentially to the detriment of all other Members of the Exchange. The proposed Exemption provides one-time relief from the Excessive Quoting Fee during a 12-month period and will not undermine the purpose of the Excessive Quoting Fee, but will continue to balance

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<sup>7</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 the Definitions Section of the Fee Schedule.

<sup>8</sup> See NYSE American Options Fee Schedule, Section II. Monthly Excessive Bandwidth Utilization Fees, available at [https://www.nyse.com/publicdocs/nyse/markets/american-options/NYSE\\_American\\_Options\\_Fee\\_Schedule.pdf](https://www.nyse.com/publicdocs/nyse/markets/american-options/NYSE_American_Options_Fee_Schedule.pdf) ("The Monthly Excessive Bandwidth Utilization Fee will not be assessed for the first occurrence in a rolling 12-month period."); see also NYSE Arca Options Fees and Charges, NYSE Arca Options General, note 12, available at [https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE\\_Arca\\_Options\\_Fee\\_Schedule.pdf](https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf) ("The Ratio Threshold Fee is calculated on a monthly basis. This fee shall not apply to orders that improve the Exchange's prevailing best bid-offer (BBO) market at the time the orders are received. The fee will not be assessed for the first occurrence in a rolling 12-month period.").

<sup>9</sup> See Securities Exchange Act Release Nos. 91406 (March 24, 2021), 86 FR 16795 (March 31, 2021) (SR-EMERALD-2021-10) and 94368 (March 7, 2022), 87 FR 14051 (March 11, 2022) (SR-EMERALD-2022-09).

the interests of Market Makers sending quotes to the Exchange, pursuant to their quoting obligations and quoting strategies and not over utilize the System. The Exchange also notes that since the adoption of the Excessive Quoting Fee in early 2021, the Exchange assessed the Excessive Quoting Fee only one time.

#### Implementation

The proposed changes are immediately effective.

#### b. Statutory Basis

The Exchange believes that its proposal to amend the Fee Schedule is consistent with Section 6(b) of the Act<sup>10</sup> in general, and furthers the objectives of Section 6(b)(4) and (5) of the Act<sup>11</sup> in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among its Members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

#### The Proposed Rule Change is Reasonable

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>12</sup>

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

<sup>11</sup> 15 U.S.C. 78f(b)(4).

<sup>12</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7-10-04) (“Reg NMS Adopting Release”).

There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than approximately 13% of the market share of executed volume of multiply-listed equity and exchange-traded fund (“ETF”) options trades.<sup>13</sup> Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, for the month of June 2023, the Exchange had a market share of 3.04% of executed volume of multiply-listed equity and ETF options trades.<sup>14</sup>

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain options exchange transaction fees. Stated otherwise, modifications to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

The Exchange believes that the proposed Exemption is reasonable because it provides one-time relief to Market Makers from the Excessive Quoting Fee during a 12-month period during which a combination of possible factors, described above, may result in that Market Maker potentially exceeding the 3.5 billion inbound quote limit on a particular trading day. The Exchange believes the proposed Exemption will not undermine the purpose of the Excessive Quoting Fee, but will continue to balance the interests of Market Makers sending quotes to the Exchange, pursuant to their quoting obligations and quoting strategies, while ensuring that Market Makers do not over utilize the Exchange’s System by sending excessive numbers of

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<sup>13</sup> See the “Market Share” section of the Exchange’s website, available at <https://www.miaxglobal.com/> (last visited July 27, 2023).

<sup>14</sup> See *id.*

quotes to the potential detriment of other Members of the Exchange. In the backdrop of the competitive environment in which the Exchange operates, the proposed rule change is a reasonable attempt by the Exchange to mitigate effects of an ever-changing marketplace without affecting its competitiveness or the quantity of quotes being sent by Market Makers. The Exchange also believes the proposed Exemption is reasonable because it is similar to the exemption currently offered by NYSE Arca Options and NYSE American Options for their Ratio Threshold Fee.<sup>15</sup>

The Proposed Rule Change is an Equitable Allocation of Fees

The Exchange believes the proposed change is an equitable allocation of fees. The proposed Exemption is an equitable allocation of fees because it would be available to all Market Makers. All Market Makers would be eligible for the Exemption the first trading day they would incur the daily Excessive Quoting Fee in a rolling 12-month period. In addition, to the extent the Exemption encourages Market Makers to maintain their quoting activity on the Exchange by mitigating the initial impact of the Excessive Quoting Fee, the Exchange believes the proposed change would promote market quality to the benefit of all market participants.

The Proposed Rule Change is not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory because it neither targets nor will it have a disparate impact on any particular type of Market Maker. The Exchange believes the proposed Exemption is not unfairly discriminatory because it would apply to all Market Makers on an equal and non-discriminatory basis. The Exemption, as proposed, would provide all Market Makers with an exemption from the daily Excessive Quoting Fee the first trading day such fee would be incurred in a rolling 12-month period. The Exchange believes that

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<sup>15</sup> See supra note 8.

the proposed change would encourage Market Makers to continue quoting on the Exchange by providing one-time relief from the Excessive Quoting Fee in a rolling 12-month period and providing Market Makers with an opportunity to evaluate their quoting behavior, while balancing the interests of all market participants that send messages to the Exchange on a daily basis. The proposed change would thus support continued quoting and trading opportunities for all market participants, thereby promoting just and equitable principles of trade, 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.

The Exchange will continue to review the quoting behavior of all firms in connection with changing market conditions and technology or algorithm changes on a regular basis to ensure that the proposed Exemption is providing relief for Market Makers as intended.

#### **4. Self-Regulatory Organization's Statement on Burden on Competition**

In accordance with Section 6(b)(8) of the Act, the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed change would encourage the submission of additional quotes to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for all market participants.

##### **Intramarket Competition**

The Exchange does not believe the proposed changes would impose any burden on intramarket competition that is not necessary or appropriate. The proposed Exemption would apply equally to all Market Makers. All Market Makers would be eligible for the Exemption for the first occurrence that the Excessive Quoting Fee would be imposed for exceeding the 3.5

billion inbound quote limit on a particular trading day, over the course of a rolling 12-month period. To the extent the proposed change is successful in encouraging Market Makers to maintain their quoting activity on the Exchange, the Exchange believes the proposed change will continue to promote market quality to the benefit of all market participants.

#### Intermarket Competition

The Exchange operates in a highly competitive market in which market participants can readily favor one of the 16 competing option exchanges if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange. Based on publicly-available information, and excluding index-based options, no single exchange has more than approximately 13% of the market share of executed volume of multiply-listed equity and ETF options trades.<sup>16</sup> Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, for the month of June 2023, the Exchange had a market share of 3.04% of executed volume of multiply-listed equity and ETF options trades.<sup>17</sup>

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**

Not applicable.

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

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<sup>16</sup> See supra note 13.

<sup>17</sup> See id.

Pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>18</sup> and Rule 19b-4(f)(2) thereunder<sup>19</sup> the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

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

The proposed rule change is not based on the rules of another exchange or of the Commission.

**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. Copy of the applicable section of the Fee Schedule.

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<sup>18</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>19</sup> 17 CFR 240.19b-4.

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. SR-EMERALD-2023-20)

July \_\_, 2023

Self-Regulatory Organizations: MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to amend the MIAX Emerald Options Exchange Fee Schedule to Modify the Excessive Quoting Fee

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 July \_\_, 2023, 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 amend the MIAX Emerald Options Exchange Fee Schedule (the “Fee Schedule”) to modify the Excessive Quoting Fee. The text of the proposed rule change is available on the Exchange’s website at <https://www.miaxglobal.com/markets/us-options/emerald-options/rule-filings>, 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 amend Section 1)c) of the Fee Schedule to add an exemption such that Market Makers<sup>3</sup> would not be assessed the daily Excessive Quoting Fee for the first trading day that they exceed the 3.5 billion inbound quote<sup>4</sup> limit in a rolling 12-month period. The Exchange originally filed this proposal on July 18, 2023 (SR-EMEARLD-2023-17). On July 27, 2023, the Exchange withdrew SR-EMERALD-2023-17 and refiled this proposal.

Background

The Exchange adopted the Excessive Quoting Fee as a result of a significant upgrade to the MIAX Emerald System<sup>5</sup> network architecture, based on customer demand, which resulted in the Exchange's network environment becoming more transparent and deterministic. Pursuant to the Excessive Quoting Fee, the Exchange will assess a fee of \$10,000 per day to any Market Maker that exceeds 3.5 billion inbound quotes sent to the Exchange on that particular day. In counting the total number of quotes for the purposes of the Excessive Quoting Fee, the Exchange excludes messages that are generated as a result of sending a mass purge message to the

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<sup>3</sup> The term "Market Maker" refers to "Lead Market Maker" ("LMM"), "Primary Lead Market Maker" ("PLMM") and "Registered Market Maker" ("RMM"), collectively. See the Definitions Section of the Fee Schedule and Exchange Rule 100.

<sup>4</sup> The term "quote" or "quotation" means a bid or offer entered by a Market Maker that is firm and may update the Market Maker's previous quote, if any. The Rules of the Exchange provide for the use of different types of quotes, including Standard quotes and eQuotes, as more fully described in Rule 517. A Market Maker may, at times, choose to have multiple types of quotes active in an individual option. See the Definitions Section of the Fee Schedule.

<sup>5</sup> The term "System" means the automated trading system used by the Exchange for the trading of securities. See Exchange Rule 100.

Exchange. The 3.5 billion inbound quote limit for the Excessive Quoting Fee resets each trading day.<sup>6</sup>

### Proposal

The Exchange proposes to adopt an exemption from the daily Excessive Quoting Fee for the first trading day that a Market Maker would incur such fee in a rolling 12-month period (the “Exemption”). For example, if a Market Maker exceeds 3.5 billion inbound quotes on August 1, 2023, the Exchange will not assess the Excessive Quoting Fee. Following that initial exceeding day, if that same Market Maker exceeds the 3.5 billion inbound quote limit again on any trading day between August 2, 2023 and July 31, 2024, then the Exchange would assess the Excessive Quoting Fee on each of those days. Continuing with this scenario, beginning with August 1, 2024, if that same Market Maker exceeds the 3.5 billion inbound quote limit on September 1, 2024, the Exchange would not assess the Excessive Quoting Fee for that day because a new rolling 12-month period started. Following that exceeding day of September 1, 2024, if that same Market Maker exceeds the 3.5 billion inbound quote limit again on any trading day between September 2, 2024 and August 31, 2025, then the Exchange would assess the Excessive Quoting Fee on each of those days.

The purpose of the proposed Exemption is intended to provide one-time relief to Market Makers from the Excessive Quoting Fee during a 12-month period. For example, increased volatility in the market place, an increase in the number of options products quoted on the Exchange, Market Makers testing new algorithms or technology, or some combination of those factors, among others, may impact the number of quotes sent by a Market Maker on a particular trading day, resulting in that Market Maker potentially exceeding the 3.5 billion inbound quote

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<sup>6</sup> See Fee Schedule, Section 1)c).

limit. The proposed Exemption would provide one-time relief in those types of circumstances. The Exchange believes the proposed Exemption will not undermine the purpose of the Excessive Quoting Fee, but will continue to balance the interests of Market Makers sending quotes to the Exchange, pursuant to their quoting obligations and quoting strategies, while ensuring that Market Makers do not over utilize the Exchange's System by sending excessive numbers of quotes to the potential detriment of other Members<sup>7</sup> of the Exchange.

The proposal contemplates that a Market Maker would have to exceed the high threshold of 3.5 billion inbound quotes on more than one trading day in a rolling 12-month period before that Market Maker would be charged the Excessive Quoting Fee (with the Exemption providing relief once during a rolling 12-month period). The Exchange believes the proposed Exemption is similar to the exemption currently offered by the options markets for NYSE Arca, Inc. ("NYSE Arca Options") and NYSE American LLC ("NYSE American Options") for those exchanges' "Ratio Threshold Fee."<sup>8</sup>

The Excessive Quoting Fee was not intended to be a source of revenue for the Exchange, as the Exchange noted in its proposals to adopt the Excessive Quoting Fee and increase the inbound quote limit.<sup>9</sup> Rather, the Excessive Quoting Fee was designed to ensure that Market

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<sup>7</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 the Definitions Section of the Fee Schedule.

<sup>8</sup> See NYSE American Options Fee Schedule, Section II. Monthly Excessive Bandwidth Utilization Fees, available at [https://www.nyse.com/publicdocs/nyse/markets/american-options/NYSE\\_American\\_Options\\_Fee\\_Schedule.pdf](https://www.nyse.com/publicdocs/nyse/markets/american-options/NYSE_American_Options_Fee_Schedule.pdf) ("The Monthly Excessive Bandwidth Utilization Fee will not be assessed for the first occurrence in a rolling 12-month period."); see also NYSE Arca Options Fees and Charges, NYSE Arca Options General, note 12, available at [https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE\\_Arca\\_Options\\_Fee\\_Schedule.pdf](https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf) ("The Ratio Threshold Fee is calculated on a monthly basis. This fee shall not apply to orders that improve the Exchange's prevailing best bid-offer (BBO) market at the time the orders are received. The fee will not be assessed for the first occurrence in a rolling 12-month period.").

<sup>9</sup> See Securities Exchange Act Release Nos. 91406 (March 24, 2021), 86 FR 16795 (March 31, 2021) (SR-EMERALD-2021-10) and 94368 (March 7, 2022), 87 FR 14051 (March 11, 2022) (SR-EMERALD-2022-09).

Makers do not over utilize the Exchange's System by sending excessive numbers of quotes to the Exchange, potentially to the detriment of all other Members of the Exchange. The proposed Exemption provides one-time relief from the Excessive Quoting Fee during a 12-month period and will not undermine the purpose of the Excessive Quoting Fee, but will continue to balance the interests of Market Makers sending quotes to the Exchange, pursuant to their quoting obligations and quoting strategies and not over utilize the System. The Exchange also notes that since the adoption of the Excessive Quoting Fee in early 2021, the Exchange assessed the Excessive Quoting Fee only one time.

### Implementation

The proposed changes are immediately effective.

### 2. Statutory Basis

The Exchange believes that its proposal to amend the Fee Schedule is consistent with Section 6(b) of the Act<sup>10</sup> in general, and furthers the objectives of Section 6(b)(4) and (5) of the Act<sup>11</sup> in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among its Members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

### The Proposed Rule Change is Reasonable

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in

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

<sup>11</sup> 15 U.S.C. 78f(b)(4).

promoting market competition in its broader forms that are most important to investors and listed companies.<sup>12</sup>

There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than approximately 13% of the market share of executed volume of multiply-listed equity and exchange-traded fund (“ETF”) options trades.<sup>13</sup> Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, for the month of June 2023, the Exchange had a market share of 3.04% of executed volume of multiply-listed equity and ETF options trades.<sup>14</sup>

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain options exchange transaction fees. Stated otherwise, modifications to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

The Exchange believes that the proposed Exemption is reasonable because it provides one-time relief to Market Makers from the Excessive Quoting Fee during a 12-month period during which a combination of possible factors, described above, may result in that Market Maker potentially exceeding the 3.5 billion inbound quote limit on a particular trading day. The Exchange believes the proposed Exemption will not undermine the purpose of the Excessive

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<sup>12</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7-10-04) (“Reg NMS Adopting Release”).

<sup>13</sup> See the “Market Share” section of the Exchange’s website, available at <https://www.miaxglobal.com/> (last visited July 27, 2023).

<sup>14</sup> See id.

Quoting Fee, but will continue to balance the interests of Market Makers sending quotes to the Exchange, pursuant to their quoting obligations and quoting strategies, while ensuring that Market Makers do not over utilize the Exchange's System by sending excessive numbers of quotes to the potential detriment of other Members of the Exchange. In the backdrop of the competitive environment in which the Exchange operates, the proposed rule change is a reasonable attempt by the Exchange to mitigate effects of an ever-changing marketplace without affecting its competitiveness or the quantity of quotes being sent by Market Makers. The Exchange also believes the proposed Exemption is reasonable because it is similar to the exemption currently offered by NYSE Arca Options and NYSE American Options for their Ratio Threshold Fee.<sup>15</sup>

The Proposed Rule Change is an Equitable Allocation of Fees

The Exchange believes the proposed change is an equitable allocation of fees. The proposed Exemption is an equitable allocation of fees because it would be available to all Market Makers. All Market Makers would be eligible for the Exemption the first trading day they would incur the daily Excessive Quoting Fee in a rolling 12-month period. In addition, to the extent the Exemption encourages Market Makers to maintain their quoting activity on the Exchange by mitigating the initial impact of the Excessive Quoting Fee, the Exchange believes the proposed change would promote market quality to the benefit of all market participants.

The Proposed Rule Change is not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory because it neither targets nor will it have a disparate impact on any particular type of Market Maker. The Exchange believes the proposed Exemption is not unfairly discriminatory because it would apply to all

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<sup>15</sup> See supra note 8.

Market Makers on an equal and non-discriminatory basis. The Exemption, as proposed, would provide all Market Makers with an exemption from the daily Excessive Quoting Fee the first trading day such fee would be incurred in a rolling 12-month period. The Exchange believes that the proposed change would encourage Market Makers to continue quoting on the Exchange by providing one-time relief from the Excessive Quoting Fee in a rolling 12-month period and providing Market Makers with an opportunity to evaluate their quoting behavior, while balancing the interests of all market participants that send messages to the Exchange on a daily basis. The proposed change would thus support continued quoting and trading opportunities for all market participants, thereby promoting just and equitable principles of trade, 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.

The Exchange will continue to review the quoting behavior of all firms in connection with changing market conditions and technology or algorithm changes on a regular basis to ensure that the proposed Exemption is providing relief for Market Makers as intended.

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

In accordance with Section 6(b)(8) of the Act, the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed change would encourage the submission of additional quotes to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for all market participants.

Intramarket Competition

The Exchange does not believe the proposed changes would impose any burden on intramarket competition that is not necessary or appropriate. The proposed Exemption would

apply equally to all Market Makers. All Market Makers would be eligible for the Exemption for the first occurrence that the Excessive Quoting Fee would be imposed for exceeding the 3.5 billion inbound quote limit on a particular trading day, over the course of a rolling 12-month period. To the extent the proposed change is successful in encouraging Market Makers to maintain their quoting activity on the Exchange, the Exchange believes the proposed change will continue to promote market quality to the benefit of all market participants.

#### Intermarket Competition

The Exchange operates in a highly competitive market in which market participants can readily favor one of the 16 competing option exchanges if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange. Based on publicly-available information, and excluding index-based options, no single exchange has more than approximately 13% of the market share of executed volume of multiply-listed equity and ETF options trades.<sup>16</sup> Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, for the month of June 2023, the Exchange had a market share of 3.04% of executed volume of multiply-listed equity and ETF options trades.<sup>17</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.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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<sup>16</sup> See supra note 13.

<sup>17</sup> See id.

Pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>18</sup> and Rule 19b-4(f)(2) thereunder<sup>19</sup> the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

#### 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 (<https://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-2023-20 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-2023-20. 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 (<https://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

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<sup>18</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>19</sup> 17 CFR 240.19b-4.

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-2023-20 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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

**Exhibit 5**

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

**MIAX Emerald Options Exchange Fee Schedule**

\* \* \* \* \*

**1) Transaction Fees****c) Excessive Quoting Fee**

MIAX Emerald will assess an Excessive Quoting Fee of \$10,000 per day, subject to the exemption described below, to any Market Maker that exceeds 3.5 billion inbound quotes sent to the Exchange on that particular day. The daily Excessive Quoting Fee will not be assessed for the first day that a Market Maker exceeds the 3.5 billion inbound quote limit in a rolling 12-month period. In counting the total number of quotes for the purposes of the Excessive Quoting Fee, the Exchange will exclude messages that are generated as a result of sending a mass purge message to the Exchange. The Excessive Quoting Fee limit of 3.5 billion inbound quotes will reset each trading day.

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