

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-96521; File No. SR-EMERALD-2022-36)

December 16, 2022

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend its Fee Schedule Relating to FINRA Fees

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 8, 2022, MIAX Emerald, LLC (“MIAX Emerald” or “Exchange”), filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Emerald Fee Schedule (the “Fee Schedule”) to reflect adjustments to the Financial Industry Regulatory Authority, Inc. (“FINRA”) Registration Fees and Fingerprinting Fees.

While the changes proposed herein are effective upon filing, the Exchange has designated the additional processing of each initial or amended Form U4, Form U5 or Form BD and electronic Fingerprint Processing Fees to become operative on January 2, 2023. Additionally, the Exchange designates that the FINRA Annual System Processing Fee Assessed only during Renewals become operative on January 2, 2024.³ The amendments to the paper Fingerprint Fees are immediately effective.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 90176 (October 14, 2020), 85 FR 66592 (October 20, 2020) (SR-FINRA-2020-032) (Notice of Filing and Immediate

The text of the proposed rule change is available on the Exchange’s website at <http://www.miaxoptions.com/rule-filings/emerald>, at MIAX’s principal office, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified 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 2)c) of the Fee Schedule, Web CRD Fees, to reflect adjustments to the FINRA Registration Fees and Fingerprinting Fees.⁴ The FINRA fees are collected and retained by FINRA via Web CRD for the registration of employees of MIAX Emerald Members⁵ organizations that are not also FINRA members (“Non-FINRA members”). The Exchange merely lists these fees in its Fee Schedule. The Exchange does not collect or retain these fees.

Effectiveness of a Proposed Rule Change to Adjust FINRA Fees to Provide Sustainable Funding for FINRA’s Regulatory Mission).

⁴ FINRA operates Web CRD, the central licensing and registration system for the U.S. securities industry. FINRA uses Web CRD to maintain the qualification, employment and disciplinary histories or registered associated persons of broker-dealers.

⁵ 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.

The Exchange proposes to amend: (1) the \$110 fee for the additional processing of each initial or amended Form U4, Form U5 or Form BD that includes the initial reporting, amendment, or certification or one or more disclosure events or proceedings to \$155; (2) the \$45 FINRA Annual System Processing Fee Assessed only during Renewals to \$70; and (3) the \$15 Second Submission (Electronic) Fingerprint Processing Fee to \$20. Each of these fees are listed within Section 2)c) of the Fee Schedule, Web CRD Fees. These amendments are being made in accordance with a FINRA rule change to adjust to its fees.⁶

The Exchange also proposes to amend the following Fingerprint Fees: (1) the \$29.50 Initial Submission (Electronic) fee to \$31.25;⁷ (2) the \$44.50 Initial Submission (Paper) fee to \$41.25;⁸ (3) the \$29.50 Third Submission (Electronic) fee to \$31.25;⁹ and (4) the \$44.50 Third Submission (Paper) fee to \$41.25.¹⁰ Specifically, today, the FBI fingerprint charge is \$11.25¹¹ and the FINRA electronic Fingerprint Fee will increase from \$15 to \$20 in 2023.¹² While FINRA did not amend the paper Fingerprint Fee, previously the FBI fee was reduced from

⁶ See note 3. FINRA noted in its rule change that it was adjusting its fees to provide sustainable funding for FINRA’s regulatory mission.

⁷ This fee includes a \$20.00 FINRA fee and \$11.25 FBI fee. See <https://www.finra.org/registration-exams-ce/classic-crd/fingerprints/fingerprint-fees>.

⁸ This fee includes a \$30.00 FINRA fee and a \$11.25 FBI fee. See <https://www.finra.org/registration-exams-ce/classic-crd/fingerprints/fingerprint-fees>.

⁹ This fee includes a \$20.00 FINRA fee and \$11.25 FBI fee. See <https://www.finra.org/registration-exams-ce/classic-crd/fingerprints/fingerprint-fees>.

¹⁰ This fee includes a \$30.00 FINRA fee and a \$11.25 FBI fee. See <https://www.finra.org/registration-exams-ce/classic-crd/fingerprints/fingerprint-fees>.

¹¹ See Securities Exchange Act Release No. 67247 (June 25, 2012) 77 FR 38866 (June 29, 2012) (SR-FINRA-2012-030) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Sections 4 and 6 of Schedule A to the FINRA By-Laws Regarding Fees Relating to the Central Registration Depository) (“2012 Rule Change”).

¹² See note 3.

\$14.50 to \$11.25.¹³ The paper Fingerprint Fees are not currently reflecting the amount assessed by FINRA. The amendment to the paper Fingerprint Fees will conform these fees with those of FINRA.

The FINRA Web CRD Fees are user-based, and there is no distinction in the cost incurred by FINRA if the user is a FINRA member or a Non-FINRA member. Accordingly, the proposed fees mirror those currently assessed by FINRA.

2. Statutory Basis

The Exchange believes the proposal is consistent with Section 6(b) of the Act,¹⁴ in general, and Sections 6(b)(4) and 6(b)(5) of the Act,¹⁵ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes it is reasonable to increase: (1) the \$110 fee for the additional processing of each initial or amended Form U4, Form U5 or Form BD that includes the initial reporting, amendment, or certification or one or more disclosure events or proceedings to \$155; (2) the \$45 FINRA Annual System Processing Fee Assessed only during Renewals to \$70; and (3) the electronic Fingerprint Fees from \$15 to \$20 in accordance with an adjustment to

¹³ See 2012 Rule Change at note 11. The FBI does not charge its fee on a second fingerprint transaction when it identifies the first set of fingerprints as illegible for the same individual.

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(5).

FINRA's fees¹⁶ because the proposed fees are identical to those adopted by FINRA for use of Web CRD for disclosure and the registration of FINRA members and their associated persons.

Those costs are borne by FINRA when a Non-FINRA member uses Web CRD. The Exchange's rule text will reflect the current registration and electronic fingerprint rates that will be assessed by FINRA as of January 2, 2023 for the additional processing of each initial or amended Form U4, Form U5 or Form BD and Second Submission (Electronic) Fingerprint Processing Fee and the registration rates that will be assessed by FINRA as of January 2, 2024 for the FINRA Annual System Processing Fee Assessed only during Renewals.¹⁷

The Exchange believes it is reasonable to correct the paper Fingerprint Fees to reflect the reduced FBI Fee of \$11.25.¹⁸ The amendments to the paper Fingerprint Fees will provide all MIAX Emerald Electronic Exchange Member and Market Maker organizations with the correct Fingerprint Fees.

The Exchange believes it is equitable and not unfairly discriminatory to increase: (1) the \$110 fee for the additional processing of each initial or amended Form U4, Form U5 or Form BD that includes the initial reporting, amendment, or certification or one or more disclosure events or proceedings to \$155; (2) the \$45 FINRA Annual System Processing Fee Assessed only during Renewals to \$70; and (3) the electronic Fingerprint Fees from \$15 to \$20 in accordance with an adjustment to FINRA's fees¹⁹ because the Exchange will not be collecting or retaining these

¹⁶ The \$20 FINRA Fee is in addition to the \$11.25 FBI Fee except for the second fingerprint transaction.

¹⁷ See note 3.

¹⁸ See 2012 Rule Change at note 11. The FBI does not charge its fee on a second fingerprint transaction when it identifies the first set of fingerprints as illegible for the same individual.

¹⁹ The \$20 FINRA Fee is in addition to the \$11.25 FBI Fee except for the second fingerprint transaction.

fees, therefore, the Exchange will not be in a position to apply them in an inequitable or unfairly discriminatory manner. Similarly, the Exchange believes it is equitable and not unfairly discriminatory to correct the paper Fingerprint Fees to reflect the reduced FBI Fee of \$11.25²⁰ because the Exchange will not be collecting or retaining these fees, therefore, the Exchange will not be in a position to apply them in an inequitable or unfairly discriminatory manner.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that its proposal to increase: (1) the \$110 fee for the additional processing of each initial or amended Form U4, Form U5 or Form BD that includes the initial reporting, amendment, or certification or one or more disclosure events or proceedings to \$155; (2) the \$45 FINRA Annual System Processing Fee Assessed only during Renewals to \$70; and (3) the electronic Fingerprint Fees from \$15 to \$20 in accordance with an adjustment to FINRA's fees²¹ does not impose an undue burden on competition because the Exchange will not be collecting or retaining these fees, therefore, the Exchange will not be in a position to apply them in an inequitable or unfairly discriminatory manner. The proposal will reflect the fees that will be assessed by FINRA to all Members who register or require fingerprints as of January 2, 2023, and January 2, 2024 respectively.

Similarly, the Exchange believes it does not impose an undue burden on competition to correct the paper Fingerprint Fees to reflect the reduced FBI Fee of \$11.25 because the Exchange

²⁰ See 2012 Rule Change at note 11. The FBI does not charge its fee on a second fingerprint transaction when it identifies the first set of fingerprints as illegible for the same individual.

²¹ The \$20 FINRA Fee is in addition to the \$11.25 FBI Fee except for the second fingerprint transaction.

will not be collecting or retaining these fees, therefore, the Exchange will not be in a position to apply them in an inequitable or unfairly discriminatory manner.

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

Written comments were neither solicited nor received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,²² and Rule 19b-4(f)(2)²³ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission’s Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-EMERALD-2022-36 on the subject line.

²² 15 U.S.C. 78s(b)(3)(A)(ii).

²³ 17 CFR 240.19b-4(f)(2).

Paper Comments:

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

All submissions should refer to File Number SR-EMERALD-2022-36. 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that

you wish to make available publicly. All submissions should refer to File Number SR-EMERALD-2022-36 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.²⁴

Sherry R. Haywood,
Assistant Secretary.

²⁴ 17 CFR 200.30-3(a)(12).