

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-98088; File No. SR-EMERALD-2023-20)

August 8, 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 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 27, 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 and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend 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 the proposed rule change. The text of these statements may be examined at the places specified in

---

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

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

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

---

<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

---

<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

---

<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,

---

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

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

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>

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

---

<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.*

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 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

---

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

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 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.

---

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

<sup>17</sup> See id.

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

The foregoing rule changes has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>18</sup> and Rule 19b-4(f)(2)<sup>19</sup> 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.

### 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 email 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 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 email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post

---

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

<sup>19</sup> 17 CFR 240.19b-4(f)(2).

all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. 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.*

---

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