

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-98513; File No. SR-EMERALD-2023-25)

September 25, 2023

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Provide Eligible Members Another Opportunity to Elect to Participate in the Maintaining Qualifications Program

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 September 22, 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 is filing a proposal to amend Interpretation and Policy .01 to Exchange Rule 1903, Continuing Education, to provide eligible Members³ another opportunity to elect to participate in the Maintaining Qualifications Program (“MQP”).

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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 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.

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 Interpretation and Policy .01 to Exchange Rule 1903, Continuing Education, to provide eligible Members another opportunity to elect to participate in the Maintaining Qualifications Program (“MQP”).

The continuing education program for registered persons of Members (“CE Program”) currently requires registered persons to complete continuing education consisting of a Regulatory Element and a Firm Element. The Regulatory Element is administered by the Financial Industry Regulatory Authority, Inc. (“FINRA”). FINRA, on behalf of the Exchange, focuses on regulatory requirements and industry standards, while the Firm Element is provided by each firm and focuses on securities products, services and strategies the firm offers, firm policies and industry trends.

The CE Program is codified under the rules of the self-regulatory organizations. The CE Program for registered persons of Exchange Members is codified under Exchange Rule 1903, Continuing Education.⁴ This proposed rule change is based on a filing recently submitted by

⁴ See also Exchange Rule 1903, Interpretation and Policy .06, All Registered Persons Must Satisfy the Regulatory Element of Continuing Education.

FINRA and is intended to harmonize the Exchange’s continuing education rules with those of FINRA so as to promote uniform standards across the securities industry.⁵ The proposed rule change is discussed in detail below.

On June 10, 2022, the Exchange amended Exchange Rule 1900, Registration Requirements, and Exchange Rule 1903, Continuing Education, to, among other things, provide eligible individuals who terminate any of their representative or principal registration categories the option of maintaining their qualification for any terminated registration categories by completing annual continuing education through a new program, the MQP.⁶ By that time, however, the First Enrollment Period, defined below, had expired, leaving many eligible individuals from being able to participate in the MQP. This proposed rule change will provide those eligible individuals a second opportunity to elect to participate in the MQP to maintain their qualification.

Prior to the MQP, individuals whose registrations as representative or principals had been terminated for two or more years could reregister as representatives or principals only if they requalified by retaking and passing the applicable representative- or principal-level examination or if they obtained a waiver of such examination(s) (the “two-year qualification period”). The MQP provides these individuals an alternative means of staying current on their regulatory and securities knowledge following the termination of a registration.⁷ Specifically, the MQP provides

⁵ See Securities Exchange Act Release No. 97184 (Mar. 22, 2023), 88 FR 18359 (Mar. 28, 2023) (SR-FINRA-2023-005) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend FINRA Rule 1240.01 To Provide Eligible Individuals Another Opportunity to Elect to Participate in the Maintaining Qualifications Program) (“FINRA Rule Change”).

⁶ See Securities Exchange Act Release No. 95177 (June 29, 2022), 87 FR 40324 (July 6, 2022) (SR-EMERALD-2022-22) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 1900, Registration Requirements, Exchange Rule 1903, Continuing Education Requirements, and Exchange Rule 1904, Electronic Filing Requirements for Uniform Forms).

⁷ The MQP does not eliminate the two-year qualification period. Thus, eligible individuals who elect not to participate in the MQP can continue to avail themselves of the two-year qualification period (i.e., they can

eligible individuals a maximum of five years following the termination of a representative or principal registration category to reregister without having to requalify by examination or having to obtain an examination waiver, subject to satisfying the conditions and limitations of the MQP, including the annual completion of all prescribed continuing education.

Under Exchange Rule 1903, Interpretation and Policy .01, the MQP has a look-back provision that, subject to specified conditions, extended the option to participate in the MQP to individuals who: (1) were registered as a representative or principal within two years immediately prior to July 1, 2022 (the implementation date of Exchange MQP); and (2) individuals who were participating in the Financial Services Affiliate Waiver Program (“FSAWP”) under Exchange Rule 1900, Interpretation and Policy .09, Waiver of Examinations for Individuals Working for a Financial Services Industry Affiliate of a Member, immediately prior to July 1, 2022 (collectively, “Look-Back Individuals”).⁸

In the FINRA Rule Change, FINRA noted that in Regulatory Notice 21-41 (November 17, 2021), it announced that Look-Back Individuals who wanted to take part in FINRA’s MQP were required to make their election between January 31, 2022, and March 15, 2022 (the “First Enrollment Period”). In addition to the announcement in Regulatory Notice 21-41, FINRA notified the Look-Back Individuals about the MQP and the First Enrollment Period via two separate mailings of postcards to their home addresses and communications through their FINRA Financial Professional Gateway (“FinPro”) accounts.⁹

reregister within two years of terminating a registration category without having to requalify by examination or having to obtain an examination waiver).

⁸ The FSAWP is a waiver program for eligible individuals who have left a member firm to work for a foreign or domestic financial services affiliate of a member firm. The Exchange stopped accepting new participants for the FSAWP beginning on July 1, 2022; however, individuals who were already participating in the FSAWP prior to that date had the option of continuing in the FSAWP.

⁹ Look-Back Individuals were able to notify FINRA of their election to participate in the MQP through their FinPro accounts.

In the FINRA Rule Change, FINRA further noted that shortly after the First Enrollment Period had ended, a number of Look-Back Individuals contacted FINRA and indicated that they had only recently become aware of the MQP. FINRA noted that it also received anecdotal information that a number of these individuals may not have learned of the MQP, or the First Enrollment Period, in a timely manner, or at all, due to communication and operational issues.¹⁰ In addition, the original six-week enrollment period may not have provided Look-Back Individuals with sufficient time to evaluate whether they should participate in the MQP. For these reasons, FINRA recently amended its rules to provide Look-Back Individuals a second opportunity to elect to participate in the MQP (the “Second Enrollment Period”). For similar reasons, the Exchange is also proposing to amend its rules to provide Look-Back Individuals with a Second Enrollment Period.¹¹ The Exchange’s Second Enrollment Period will be between the effective date of this proposed rule change and December 31, 2023. In addition, the proposed rule change requires that Look-Back Individuals who elect to participate in the MQP during the Second Enrollment Period complete any prescribed 2022 and 2023 MQP content by March 31, 2024.¹²

¹⁰ According to FINRA, this may have been a result of the timing of FINRA’s announcements relating to the MQP, which coincided with the holiday season and the transition to the New Year. Further, given that Look-Back Individuals were out of the industry at the time of these announcements, it was unlikely that they would have learned of the MQP, or the First Enrollment Period, through informal communication channels.

¹¹ The current rule text also provides that if Look-Back Individuals elect to participate in the MQP, their five-year participation period will be adjusted by deducting from that period the amount of time that has lapsed between the date that they terminated their registrations and July 1, 2022. To reflect the availability of the Second Enrollment Period, the proposed rule change clarifies that for all Look-Back Individuals who elect to participate in the MQP, their participation period would also be for a period of five years following the termination of their registration categories, as with other MQP participants.

¹² Look-Back Individuals who elect to enroll in the MQP during the Second Enrollment Period would also need to pay the annual program fee of \$100 for both 2022 and 2023 at the time of their enrollment.

The Exchange believes that Look-Back Individuals generally have greater awareness of the MQP, including due to news coverage, since the program's launch.¹³ The Exchange believes that greater public awareness of the MQP, coupled with a four-month enrollment period, should help ensure that all Look-Back Individuals are aware of the MQP and the availability of the Second Enrollment Period and should provide them with ample time to decide whether to participate in the MQP.

Look-Back Individuals who elect to enroll during the Second Enrollment Period would need to notify FINRA of their election to participate in the MQP through a manner to be determined by FINRA.¹⁴ The Exchange also notes that Look-Back Individuals who elect to participate in the MQP during the Second Enrollment Period would continue to be subject to all of the other MQP eligibility and participation conditions. For example, as clarified in the proposed rule change, Look-Back Individuals electing to participate during the Second Enrollment Period would have only a maximum of five years following the termination of a registration category in which to reregister without having to requalify by examination or having to obtain an examination waiver.¹⁵

¹³ See, e.g., Joanne Cleaver, FINRA Sets Big Change in Motion with New Options for Licensing Grace Period, InvestmentNews (June 23, 2022), <https://www.investmentnews.com/finra-sets-big-change-in-motion-with-new-option-forlicensing-grace-period-222942>.

¹⁴ In the FINRA Rule Change, FINRA noted that it anticipates that Look-Back Individuals will make their selection to enroll in the MQP during the Second Enrollment Period through their FinPro accounts. See Enrolling in the MQP, <https://www.finra.org/registration-exams-ce/finpro/mqp> (describing the MQP enrollment process). FINRA further noted that it will inform Look-Back Individuals if it determines to provide an alternative enrollment method.

¹⁵ For example, if a Look-Back Individual terminated a registration category on July 1, 2020, and elects to participate in the MQP on December 1, 2023, the individual's maximum participation period would be five years starting on July 1, 2020, and ending no later than July 1, 2025. If the individual does not reregister with a member firm by July 1, 2025, the individual would need to requalify by examination or obtain an examination waiver in order to reregister after that date.

2. 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 Section 6(b) of the Act.¹⁶ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁷ 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁸ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange's rule proposal is intended to harmonize the Exchange's supervision rules, specifically with respect to the continuing education requirements with those of FINRA, on which they are based. Consequently, the proposed change will conform the Exchange's rules to changes made to corresponding FINRA rules, thus promoting application of consistent regulatory standards with respect to rules that FINRA enforces pursuant to its regulatory services agreement with the Exchange.

The Exchange believes that providing Look-Back Individuals a second opportunity to elect to participate in the MQP is warranted because participation in the MQP would reduce unnecessary impediments to requalification for these Members without diminishing investor

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(5).

¹⁸ Id.

protection. In addition, the proposed rule change is consistent with other goals, such as the promotion of diversity and inclusion in the securities industry by attracting and retaining a broader and diverse group of professionals. The MQP also allows the industry to retain expertise from skilled Members, providing investors with the advantage of greater experience among the Members working in the industry. The Exchange believes that providing Look-Back Individuals a second opportunity to elect to participate in the MQP will further these goals and objectives.

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. The Exchange believes that the proposed rule change, which harmonizes its rules with the recent rule change adopted by FINRA, will reduce the regulatory burden placed on market participants engaged in trading activities across different markets. The Exchange believes that the harmonization of the CE program requirements across the various markets will reduce burdens on competition by removing impediments to participation in the national market system and promoting competition among participants across the multiple national securities exchanges. Additionally, and as stated above, FINRA has recently submitted a filing to provide eligible individuals another opportunity to elect to participate in the Maintaining Qualifications Program in the same manner.¹⁹

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.

¹⁹ See supra note 5.

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

MIAX Emerald has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act²⁰ and Rule 19b-4(f)(6) thereunder.²¹ Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.²²

A proposed rule change filed under Rule 19b-4(f)(6)²³ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),²⁴ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. MIAX Emerald has indicated that the immediate operation of the proposed rule change is appropriate because it would allow the Exchange to implement the proposed changes to its continuing education rules without delay, thereby eliminating the possibility of a significant regulatory gap between the FINRA rules and the Exchange rules, providing more uniform standards across the securities industry, and helping to avoid confusion for Exchange members that are also FINRA members. MIAX Emerald also noted that FINRA plans to conduct

²⁰ 15 U.S.C. 78s(b)(3)(A)(iii).

²¹ 17 CFR 240.19b-4(f)(6).

²² 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

²³ 17 CFR 240.19b-4(f)(6).

²⁴ 17 CFR 240.19b-4(f)(6)(iii).

additional public outreach efforts to promote awareness of the MQP and the availability of the Second Enrollment Period among Look-Back Individuals. Therefore, MIAX Emerald indicated that the immediate operation of the proposed rule change is also appropriate because it would help to further notify Look-Back Individuals of their options and provide additional time for them to consider whether they wish to participate in the MQP before the December 31, 2023 deadline. For these reasons, the Commission believes that waiver of the 30-day operative delay for this proposal is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.²⁵

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 (<https://www.sec.gov/rules/sro.shtml>); or

²⁵ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

- Send an email to rule-comments@sec.gov. Please include file number SR-EMERALD-2023-25 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-2023-25. 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 all comments on the Commission's internet website (<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 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-2023-25 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.²⁶

Sherry R. Haywood,

Assistant Secretary.

²⁶ 17 CFR 200.30-3(a)(12).