

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-100686; File No. SR-EMERALD-2024-19)

August 9, 2024

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

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 July 31, 2024, 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”).

The text of the proposed rule change is available on the Exchange’s website at <https://www.miaxglobal.com/markets/us-options/miax-options/rule-filings>, at the Exchange’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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 the exchange grouping of options exchanges within the routing fee table in Section 1)c) of the Fee Schedule, Fees for Customer Orders Routed to Another Options Exchange, to reflect the recent addition of a new national securities exchange, MIAX Sapphire, LLC (“MIAX Sapphire”)³, to be listed in the routing fee table. The Exchange proposes to implement the fee change effective August 1, 2024.

Background

Currently, the Exchange assesses routing fees based upon (i) the origin type of the order; (ii) whether or not it is an order for standard option classes in the Penny Interval Program⁴ (“Penny classes”) or an order for standard option classes which are not in the Penny Interval Program (“Non-Penny classes”) (or other explicitly identified classes); and (iii) to which away market it is being routed. This assessment practice is identical to the routing fees assessment practice currently utilized by the Exchange’s affiliates, Miami International Securities Exchange, LLC (“MIAX Options”) and MIAX PEARL, LLC (“MIAX Pearl”). This is also similar to the methodology utilized by the Cboe BZX Exchange, Inc. (“Cboe BZX Options”), a competing options exchange, in assessing routing fees. Cboe BZX Options has exchange groupings in its fee schedule, similar to those of the Exchange, whereby several exchanges are grouped into the

³ See Securities Exchange Act Release No. 100539 (July 15, 2024), 89 FR 58848 (July 19, 2024) (File No. 10-240) (order approving application of MIAX Sapphire, LLC for registration as a national securities exchange).

⁴ See Exchange Rule 510(c).

same category dependent upon the order’s origin type and whether it is a Penny or Non-Penny class.⁵

As a result of the anticipated launch of MIAX Sapphire in the third quarter of 2024, the Exchange has determined to amend the exchange groupings of options exchanges within the routing fee table to include MIAX Sapphire and the anticipated associated costs of routing customer orders to MIAX Sapphire for execution.

The impact of this proposed change will be increased routing options for Members.⁶ The Exchange notes that routing through the Exchange is optional and that Members will continue to be able to choose where to route applicable Member orders. Under this proposed change, the Exchange will not amend the fees associated with the exchange groupings. This proposal merely seeks to add MIAX Sapphire to the exchange groupings as described in the routing fee table below.

Accordingly, with the proposed change, the routing fee table will be as follows:

Description	Fees
Routed, Priority Customer, Penny Program, to: NYSE American, Cboe, Cboe EDGX Options, MIAX, Nasdaq PHLX (except SPY), Nasdaq MRX, MIAX Sapphire	\$0.15
Routed, Priority Customer, Penny Program, to: BOX	\$0.30
Routed, Priority Customer, Penny Program, to: NYSE Arca Options, Cboe BZX Options, Cboe C2, Nasdaq GEMX, Nasdaq ISE, NOM, Nasdaq PHLX (SPY only), MIAX Pearl, Nasdaq BX Options, MEMX	\$0.65
Routed, Priority Customer, Non-Penny Program, to: NYSE American, BOX, Cboe, Cboe EDGX Options, MIAX, Nasdaq PHLX, Nasdaq MRX, MIAX Sapphire	\$0.15
Routed, Priority Customer, Non-Penny Program, to: NYSE Arca Options, Cboe BZX Options, Cboe C2, MIAX Pearl, Nasdaq GEMX, NOM, Nasdaq BX Options, Nasdaq ISE, MEMX	\$1.00

⁵ See Cboe U.S. Options Fee Schedules, BZX Options, effective July 15, 2024, “Fee Codes and Associated Fees,” at https://www.cboe.com/us/options/membership/fee_schedule/bzx/.

⁶ 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.

Routed, Public Customer that is not a Priority Customer, Penny Program, to: NYSE American, NYSE Arca Options, Cboe BZX Options, BOX, Cboe, Cboe C2, Cboe EDGX Options, Nasdaq GEMX, Nasdaq ISE, Nasdaq MRX, MIAX, MIAX Pearl, NOM, Nasdaq PHLX, Nasdaq BX Options, MEMX, MIAX Sapphire	\$0.65
Routed, Public Customer that is not a Priority Customer, Non-Penny Program, to: MIAX, NYSE American, Cboe, Nasdaq PHLX, Cboe EDGX Options, NOM	\$1.00
Routed, Public Customer that is not a Priority Customer, Non-Penny Program, to: Cboe C2, BOX, MIAX Sapphire	\$1.15
Routed, Public Customer that is not a Priority Customer, Non-Penny Program, to: NYSE Arca Options, Nasdaq GEMX, Nasdaq MRX, MIAX Pearl, MEMX	\$1.25
Routed, Public Customer that is not a Priority Customer, Non-Penny Program, to: Cboe BZX Options, Nasdaq ISE, Nasdaq BX Options	\$1.40

In determining to amend its routing fee table to determine which category MIAX Sapphire belongs to the Exchange took into account anticipated transaction fees and rebates assessed by the away markets to which the Exchange routes orders, as well as the Exchange's clearing costs, administrative, regulatory, and technical costs associated with routing orders to an away market. The Exchange uses unaffiliated routing brokers to route orders to the away markets; the costs associated with the use of these services are included in the routing fees specified in the Fee Schedule. This routing fee structure is not only similar to the Exchange's affiliates, MIAX Options and MIAX Pearl, but is also comparable to the structure in place on at least one other competing options exchange, Cboe BZX Options.⁷ The Exchange's routing fee structure approximates the Exchange's costs associated with routing orders to away markets. The per-contract transaction fee amount associated with each grouping closely approximates the Exchange's all-in cost (plus an additional, non-material amount)⁸ to execute that corresponding contract at that corresponding exchange.

⁷ The Cboe BZX Options fee schedule is similar to the Exchange's Fee Schedule in that it has exchange groupings, whereby several exchanges are grouped into the same category. See supra note 5.

⁸ This amount is to cover de minimis differences/changes to away market fees (i.e., minor increases or decreases) that would not necessitate a fee filing by the Exchange to re-categorize the away exchange into a

The Exchange notes that in determining whether to adjust certain groupings of options exchanges in the routing fee table, the Exchange considered the transaction fees assessed by away markets, and determined to amend the grouping of exchanges that assess transaction fees for routed orders within a similar range. This same logic and structure applies to all of the groupings in the routing fee table. By utilizing the same structure that is utilized by the Exchange's affiliates, MIAX Options and MIAX Pearl, the Exchange's Members will be assessed routing fees in a similar manner. The Exchange notes that its affiliates, MIAX Options and MIAX Pearl, will file to make the same proposed routing fee changes contained herein.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act⁹ in general, and furthers the objectives of Section 6(b)(4) of the Act¹⁰ 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. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act¹¹ in that it is designed to promote just and equitable principles of trade, 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 and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes the proposed change to add MIAX Sapphire to the exchange groupings of options exchanges within the routing fee table furthers the objectives of Section

different grouping. Routing fees are not intended to be a profit center for the Exchange and the Exchange's goal regarding routing fees and expenses is to be as close as possible to net neutral.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4).

¹¹ 15 U.S.C. 78f(b)(5).

6(b)(4) of the Act and is reasonable, equitable and not unfairly discriminatory because the proposed change will continue to apply in the same manner to all Members that are subject to routing fees. The Exchange believes the proposed change to add MIAX Sapphire to the routing fee table of exchange groupings furthers the objectives of Section 6(b)(5) of the Act and is designed to promote just and equitable principles of trade and is not unfairly discriminatory because the proposed change seeks to recoup costs that will be incurred by the Exchange when routing customer orders to MIAX Sapphire on behalf of Members and does so in the same manner to all Members that are subject to routing fees. The costs to the Exchange to route orders to away markets for execution primarily includes transaction fees and rebates assessed by the away markets to which the Exchange routes orders, in addition to the Exchange's clearing costs, administrative, regulatory and technical costs. The Exchange believes that the proposed addition of MIAX Sapphire to the exchange groupings would increase the routing options available to Members. The per-contract transaction fee amount associated with each grouping approximates the Exchange's all-in cost (plus an additional, non-material amount) to execute the corresponding contract at the corresponding exchange.

The Exchange believes that the proposed rule change is equitable and not unfairly discriminatory because all Members' orders in Penny classes and Non-Penny classes routed to MIAX Sapphire will be uniformly assessed the corresponding fee.

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 not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed rule change to add MIAX Sapphire to the routing fee table will impose any burden on intramarket competition. Rather, the Exchange believes that the

proposal will promote competition by increasing the available away markets to which Members can route orders to.

C. 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.

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,¹² and Rule 19b-4(f)(2)¹³ 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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-EMERALD-2024-19 on the subject line.

¹² 15 U.S.C. 78s(b)(3)(A)(ii).

¹³ 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-2024-19. 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-2024-19 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.¹⁴

Vanessa A. Countryman,

Secretary.

¹⁴ 17 CFR 200.30-3(a)(12).