

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-100857; File No. SR-EMERALD-2024-22)

August 28, 2024

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

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”) and Rule 19b-4 thereunder,² notice is hereby given that on August 15, 2024, MIAX Emerald, LLC (“MIAX Emerald” or “Exchange”), filed with the Securities and Exchange Commission (“Commission”) the 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 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/all-options-exchanges/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

¹ 15 U.S.C. 78s(b)(1).

² 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 another exemption to the daily Excessive Quoting fee. The Exchange filed the initial proposal on August 5, 2024 (SR-EMERALD-2024-20). On August 15, 2024, the Exchange withdrew SR-EMERALD-2024-20 and resubmitted this proposal.

For background, the Exchange adopted the Excessive Quoting Fee as a result of a significant upgrade to the MIAX Emerald System³ 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 Maker⁴ that exceeds 3.5 billion inbound quotes⁵ sent to the Exchange on that particular day. However, 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.⁶

³ The term “System” means the automated trading system used by the Exchange for the trading of securities. See Exchange Rule 100.

⁴ 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.

⁵ 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.

⁶ This exemption was established in 2023. See Securities Exchange Act Release No. 98088 (August 8, 2023), 88 FR 55096 (August 14, 2023) (SR-EMERALD-2023-20).

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 (i.e., cancel/replace messages). The 3.5 billion inbound quote limit for the Excessive Quoting Fee resets each trading day.⁷

Proposal

The Exchange proposes to amend Section 1)c) of the Fee Schedule to establish another exemption to the daily Excessive Quoting Fee. In particular, the Exchange proposes that, notwithstanding the exemptions described above, the Exchange may determine not to assess the Excessive Quoting Fee in times of extraordinary market conditions, with such determination to be made by a designated Exchange Official. The Exchange notes that its rules already provide other instances of review by an Exchange Official in times of extraordinary or unusual market conditions; accordingly, such review is not new or novel.⁸

The Exchange provides the following example of how the proposed exemption would operate. On Day 1, if Market Maker “Firm A” exceeds 3.5 billion inbound quotes, the Exchange would not assess the Excessive Quoting Fee because this is the first trading day within a rolling 12-month period in which that particular Market Maker surpassed the 3.5 billion inbound quote limit. On Day 2, if Firm A again exceeds 3.5 billion inbound quotes the Exchange would normally assess the Excessive Quoting Fee; however, if the Exchange Official determines that extraordinary market conditions existed on Day 2, the Exchange would not assess the Excessive Quoting Fee on all Market Makers⁹, including Firm A, for exceeding the inbound quote limit on

⁷ See Fee Schedule, Section 1)c).

⁸ See, e.g., Exchange Rule 506(d)(1).

⁹ For Market Makers that did not yet exceed the 3.5 billion inbound quote limit, Day 2 would also not count towards the exemption in the rule that allows Market Makers to exceed the limit one time on a rolling 12-month basis. See Fee Schedule, Section 1)c).

that day. As such, Firm A would not be assessed the Excessive Quoting Fee on Day 2, but the rolling 12-month period would still be in effect for Firm A. On Day 3, if Firm A again exceeds 3.5 billion inbound quotes, in the absence of extraordinary market conditions declared by the designated Exchange Official, the Exchange would assess the Excessive Quoting Fee on Firm A.

The purpose of this proposal is to provide relief to Market Makers when there is increased volatility in the market place to the extent that Market Makers may routinely exceed the 3.5 billion inbound quote limit over one or more trading days. As previously noted by the Exchange, increased volatility in the market place may lead to an increase in the number of quotes generated by Market Makers for existing options. The result of these types of market conditions and factors is that a Market Maker will potentially exceed the 3.5 billion inbound quote limit each day while those conditions continue to exist. The Exchange believes that this proposal will help allow the Exchange to maintain fair and orderly markets based on unusual market conditions or extreme volatility, which may impact all participants of the Exchange.

The Exchange believes that 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 Members¹⁰ of the Exchange.

The proposal contemplates that extreme market conditions would have to occur in order for the Exchange to invoke the proposed exemption. The Exchange Official in charge of making such determination would take into account several different factors and market conditions.

¹⁰ 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.

Such conditions may include, but are not limited to, swings in major U.S. indices (i.e., the S&P 500, Dow Jones Industrial Average, or Nasdaq-100 Indices) without such indices stabilizing up or down; higher than expected or unusual trading volumes; and increased volatility in the marketplace. In the Exchange’s experience, when there is higher than expected price fluctuation, this generates a higher volume of quotes, leading to a significant increase in quoting activity by Market Makers.

The Exchange believes that the process of exempting certain trading days from counting towards the Excessive Quoting Fee is similar to that utilized by NYSE Arca, Inc. (“NYSE Arca”) for exempting certain trading days from counting towards NYSE Arca’s “Monthly Excessive Bandwidth Utilization Fee”¹¹, although the substantive basis for the exemptions are different.

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.¹² 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 relief during times of extraordinary market conditions, based upon review by a designated Exchange Official, 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,

¹¹ See NYSE Arca Options Fees and Charges, page 13, available at https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf (“The Exchange may exclude one or more days of data for purposes of calculating the Fee for an OTP Holder or OTP Firm if the Exchange determines, in its sole discretion, that one or more OTP Firms or the Exchange was experiencing a bona fide systems problem.”).

¹² 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). See *supra* note 6.

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 Act¹³ in general, and furthers the objectives of Section 6(b)(4) and (5) of the Act¹⁴ 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.”¹⁵

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(4).

¹⁵ 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 17 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than approximately 16-17% of the market share of executed volume of multiply-listed equity and exchange-traded fund (“ETF”) options trades.¹⁶ 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 July 2024, the Exchange had a market share of 4.40% of executed volume of multiply-listed equity and ETF options trades.¹⁷

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 relief to Market Makers from the Excessive Quoting Fee in times of extraordinary market conditions, based upon review of several factors by a designated Exchange Official. 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 of the Exchange. In the backdrop of the

¹⁶ See the “Market Share” section of the Exchange’s website, available at <https://www.miaxglobal.com/> (last visited August 5, 2024).

¹⁷ See *id.*

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 that the process of exempting certain trading days from counting towards the Excessive Quoting Fee is similar to that utilized by NYSE Arca, Inc. (“NYSE Arca”) for exempting certain trading days from counting towards NYSE Arca’s “Monthly Excessive Bandwidth Utilization Fee”¹⁸, although the substantive basis for the exemptions are different.

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 during times of extraordinary market conditions. For clarity, when the Exchange Official determines that extraordinary market conditions exist, every Market Maker of the Exchange would qualify for the proposed exemption and not be subject to the Excessive Quoting Fee on that particular trading day(s).¹⁹ 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

¹⁸ See supra note 11.

¹⁹ See supra note 9.

Market Makers on an equal and non-discriminatory basis. The Exchange believes that the proposed change would encourage Market Makers to continue quoting on the Exchange during times of extraordinary market conditions, which will help maintain fair and orderly markets to the benefit of all Exchange market participants. The proposed exemption 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 during times of extraordinary market conditions. 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 17 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 16-17% of the market share of executed volume of multiply-listed equity and ETF options trades.²⁰ 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 July 2024, the Exchange had a market share of 4.40% of executed volume of multiply-listed equity and ETF options trades.²¹

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

²⁰ See supra note 16.

²¹ See id.

²² 15 U.S.C. 78s(b)(3)(A)(ii).

²³ 17 CFR 240.19b-4(f)(2).

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-2024-22 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-2024-22. 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-2024-22 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.²⁴

Sherry R. Haywood,
Assistant Secretary.

²⁴ 17 CFR 200.30-3(a)(12).