

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 37

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. * SR 2022 - * 28

Amendment No. (req. for Amendments *)

Filing by MIAX Emerald, LLC

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
--	---	--	--	--	---

Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>
-----------------------------------	--	--

Rule

<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)
<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)
<input type="checkbox"/> 19b-4(f)(3)	<input checked="" type="checkbox"/> 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Section 806(e)(1) *

Section 806(e)(2) *

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 3C(b)(2) *

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

Amend Exchange Rule 519

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * Greg Last Name * Ziegler

Title * Senior Counsel

E-mail * gziegler@miaxoptions.com

Telephone * (609) 897-1483 Fax

Signature

Pursuant to the requirements of the Securities Exchange of 1934, MIAX Emerald, LLC has duty caused this filing to be signed on its behalf by the undersigned thereunto duty authorized.

Date 09/12/2022

(Title *)

By Gregory P. Ziegler

Senior Counsel

(Name *)

NOTE: Clicking the signature block at right will initiate digitally signing the form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Gregory Ziegler Date: 2022.09.12 11:17:31 -04'00'

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EDFS website.

Form 19b-4 Information *

Add Remove View

SR-EMERALD-2022-28 - 19b4.docx

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

Add Remove View

SR-EMERALD-2022-28 - Exhibit 1.do

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A - Notice of Proposed Rule Change, Security-Based Swap Submission, or Advanced Notice by Clearing Agencies *

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2- Notices, Written Comments, Transcripts, Other Communications

Add Remove View

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

Add Remove View

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit Sent As Paper Document

Exhibit 4 - Marked Copies

Add Remove View

The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

Add Remove View

SR-EMERALD-2022-28 - Exhibit 5.doc

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change

Partial Amendment

Add Remove View

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) MIAX Emerald, LLC (“MIAX Emerald” or the “Exchange”), pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² proposes to amend Exchange Rule 519, MIAX Emerald Order Monitor.

Notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1, and the text of the proposed rule change is attached hereto as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by the Chief Executive Officer of the Exchange or duly appointed designee pursuant to authority delegated by the MIAX Emerald Board of Directors on June 16, 2022. Exchange staff will advise the Board of Directors of any action taken pursuant to delegated authority.

Questions and comments on the proposed rule change may be directed to Greg Ziegler, Vice President and Senior Counsel, at (609) 897-1483.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

3. **Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

a. Purpose

The Exchange proposes to amend Exchange Rule 519, MIAX Emerald Order Monitor to (i) establish an Exchange default Threshold Setting for market orders³ to sell an option when the national best bid is zero; (ii) provide that a Member⁴ may supply their own pre-set value to be used as the Threshold Setting; (iii) reorganize the rule text for ease of reference; and (iv) adopt new rule text to add additional detail regarding the Exchange's process for evaluating and reevaluating market orders to sell. The Exchange notes that its proposal harmonizes the operation of Rule 519 to that of its affiliate exchanges, MIAX Options and MIAX Pearl that have recently amended this rule.⁵

Background

Currently, in order to avoid the occurrence of potential obvious or catastrophic errors on the Exchange the MIAX Emerald Order Monitor will prevent certain orders from executing or being placed on the Book⁶ at prices outside pre-set standard limits. Beginning after the Opening Process⁷ is complete, the MIAX Emerald Order Monitor is operational each trading day until the

³ A market order is an order to buy or sell a stated number of option contracts at the best price available at the time of execution. See Exchange Rule 516(a).

⁴ 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.

⁵ See Securities Exchange Act Release Nos. 95001 (May 27, 2022), 87 FR 33854 (June 3, 2022) (SR-MIAX-2022-22); and 95000 (May 27, 2022), 87 FR 33862 (June 3, 2022) (SR-PEARL-2022-22).

⁶ The term "Book" means the electronic book of buy and sell orders and quotes maintained by the System. See Exchange Rule 100.

⁷ See Exchange Rule 503.

close of trading.⁸ Exchange Rule 519(a)(1)(i) provides that if the Exchange upon initial receipt or reevaluation⁹ evaluates a market order to sell an option when the national best bid is zero and the Exchange's disseminated offer is equal to or less than \$0.10, the System¹⁰ will convert the market order to sell to a limit order to sell with a limit price of one minimum trading increment.¹¹ In this case, such sell orders will automatically be placed on the Book in time priority and will be displayed at the appropriate Minimum Price Variation.¹² Exchange Rule 519(a)(1)(ii) provides that if the Exchange upon initial receipt or reevaluation evaluates a market order to sell an option when the national best bid is zero and the national best offer is greater than \$0.10, the System will cancel the market order to sell.

Proposal

The Exchange now proposes to allow Members to determine their own pre-set value to be used as the threshold setting ("Threshold Setting") that the Exchange will use when evaluating market orders to sell when the national best bid is zero and the national best offer is less than, equal to, or greater than, the Threshold Setting. Members are not constrained by the Exchange in determining their Threshold Setting and may set the threshold at any value in accordance to their

⁸ See Exchange Rule 519(a).

⁹ A reevaluation of an order occurs when an order has been partially filled on the Exchange, or has been routed to an away exchange and is returned to the Exchange partially or completely unfilled, and the resulting national best bid is zero.

¹⁰ The term "System" means the automated trading system used by the Exchange for the trading of securities. See Exchange Rule 100.

¹¹ See Exchange Rule 510.

¹² See Exchange Rule 510(a).

business and risk tolerances. Members will communicate their desired threshold value to the Exchange's Help Desk.¹³

Specifically, the Exchange proposes to adopt new subparagraph (i) to paragraph (a)(1) of Rule 519 to provide that, “[f]or the purposes of this Rule a Member may establish a pre-set value to be used as the Threshold Setting by communicating its value to the Exchange's Help Desk in a form and manner to be determined by the Exchange and communicated via Regulatory Circular.¹⁴ The Exchange will establish a default Threshold Setting of \$0.10¹⁵ and communicate its value to Members via Regulatory Circular. If a Member does not establish a Threshold Setting the Exchange default value will be used.” Currently, the Exchange uses a value of \$0.10 as its threshold value for purposes of evaluating or reevaluating market orders to sell when the national best bid is zero.¹⁶

The Exchange proposes to adopt new subparagraph (ii) to paragraph (a)(1) of Rule 519 to provide that, if the Exchange receives a market order to sell an option when the national best bid is zero and the national best offer is less than or equal to the Threshold Setting, the System will convert the market order to sell, to a limit order to sell, with a limit price of one minimum trading increment.¹⁷ The Exchange proposes to use the national best offer as the reference price

¹³ The term “Help Desk” means the Exchange's control room consisting of Exchange staff authorized to make certain determinations on behalf of the Exchange. The Help Desk shall report to and be supervised by a senior executive of the Exchange. See Exchange Rule 100.

¹⁴ Requests to establish a Threshold Setting are received by the Help Desk and are processed for implementation on the next trading day.

¹⁵ The Exchange proposes to convert its current \$0.10 threshold setting to the Exchange default Threshold Setting.

¹⁶ See Exchange Rule 519(a)(1)(i) and (ii).

¹⁷ See Exchange Rule 510, Minimum Price Variations and Minimum Trading Increments.

in determining how to handle a market order to sell when the national best bid is zero as the national best offer better represents the current market conditions.¹⁸ This provision is consistent with the operation of the current rule, however the Threshold Setting used for evaluation purposes under the Exchange's proposal may now be either the Exchange's default setting of \$0.10 or the Member's Threshold Setting.

The Exchange proposes to adopt new subparagraph (iii) to paragraph (a)(1) of Rule 519 to provide that, if the Exchange reevaluates a market order to sell an option when the resulting national best bid is zero and either the trade price, route price, or national best offer is less than or equal to the Threshold Setting, the System will convert the market order to sell, to a limit order to sell, with a limit price of one minimum trading increment.¹⁹ For the purposes of this rule, the execution price of a trade in the subject series is considered the "trade price." In the event the Exchange receives a market order to sell and the Exchange is zero bid but an away market is not, the Exchange will route the order to that away exchange at the away market price, the "route price." The Exchange uses the route price, trade price, or national best offer to determine the proper disposition of a market order to sell when the national best bid becomes zero.

Current paragraph (i) describes the initial evaluation and reevaluation process of a market order to sell whereas each process is given separate treatment under this proposal. Specifically, new proposed paragraph (ii) describes the initial evaluation process of a market order to sell when the national best bid is zero and new proposed paragraph (iii) describes the reevaluation

¹⁸ The Exchange notes that its current rule uses the Exchange's disseminated offer for evaluation purposes however the Exchange proposes to use the national best offer for consistency and uniform application of the proposed rule.

¹⁹ Market orders converted to limit orders under Rule 519 are posted to the Book with a time in force of Day.

process of a market order to sell when the national best bid becomes zero. The Exchange believes this format provides additional clarity to the Exchange's rules regarding its order handling process when the Exchange reevaluates a market order to sell when the national best bid becomes zero.

The Exchange proposes to adopt new subparagraph (iv) to paragraph (a)(1) of Rule 519 to provide that, in either case of (ii) or (iii) above, such sell orders will automatically be placed on the Book in time priority and will be displayed at the appropriate Minimum Price Variation.²⁰ The Exchange notes that this language is substantially similar to the current rule text.²¹

The Exchange proposes to adopt new subparagraph (v) to paragraph (a)(1) of Rule 519 to provide that, if the Exchange receives a market order to sell an option when the national best bid is zero and the national best offer is greater than the Threshold Setting, the System will reject²² the order. This provision is consistent with the operation of the current rule, however under the Exchange's proposal the Threshold Setting used for evaluation purposes may now be either the Exchange default setting of \$0.10 or the Member's Threshold Setting.

The Exchange proposes to adopt new subparagraph (vi) to paragraph (a)(1) of Rule 519 to provide that, if the Exchange reevaluates a market order to sell an option when the resulting national best bid is zero and both (A) the trade price or route price, and (B) the national best offer, are greater than the Threshold Setting, the System will reject the order or cancel any unexecuted balance of the order. The Exchange uses the route price or trade price, in

²⁰ See Exchange Rule 510(a).

²¹ See Exchange Rule 519(a)(1)(i).

²² The current rule provides that the Exchange will cancel the order however the Exchange is proposing to provide additional clarity to distinguish order handling in the rule text in this proposal. An order that is rejected has not been accepted by the System, whereas an order that is cancelled has been accepted by the System.

conjunction with the national best offer to determine the proper disposition of a market order to sell when the national best bid becomes zero.

Proposed paragraphs (iii) and (vi) both address the reevaluation process. A market order to sell may be partially executed on the Exchange and reevaluated by the Exchange, and may also be routed to an away Exchange and then reevaluated by the Exchange. The first scenario occurs when the Exchange receives a market order to sell and the Exchange is not zero bid, but away exchanges are. In this scenario, the Exchange will execute the order on the Exchange and the execution price will be the “trade price.” In the event that there is still interest remaining of the order, and the national best bid is zero, the Exchange will reevaluate the order using the trade price. If the trade price or the national best offer price is less than or equal to the Threshold Setting, the System will convert the market order to sell, to a limit order to sell, with a limit price of one minimum increment.²³ If the trade price and the national best offer price are greater than the Threshold Setting, the System will cancel any unexecuted balance of the order.²⁴

The second scenario occurs when the Exchange receives a market order to sell and the Exchange is zero bid but away exchanges are not. The Exchange will route the order to the away exchange, if the order is returned to the Exchange and the national best bid becomes zero, the Exchange will reevaluate the order using the route price. If the route price or national best offer is less than or equal to the Threshold Setting, the System will convert the market order to sell, to a limit order to sell, with a limit price of one minimum trading increment.²⁵ If the route price

²³ See proposed Rule 519(a)(1)(iii).

²⁴ See proposed Rule 519(a)(1)(vi).

²⁵ See proposed Rule 519(a)(1)(iii).

and the national best offer are greater than the Threshold Setting, the System will reject the order or cancel any unexecuted balance of the order.²⁶

In proposed paragraph (vi) the Exchange believes considering both the route price or trade price, and the national best offer, provides a clear indication of the current market conditions when either the route price or trade price and the national best offer is greater than the Threshold Setting and allows the Exchange to make the proper determination regarding the disposition of the order.

The proposed rule text provides additional detail regarding the System's behavior when the Exchange reevaluates a market order to sell and the national best bid has become zero. Example 1 below describes the System processing when the national best offer is below the Threshold Setting, and Example 2 describes the System processing when the national best offer is above the Threshold Setting.

Example 1

MPV: \$0.05

Exchange default Threshold Setting: \$0.10

Member selected Threshold Setting: \$0.25

EBBO²⁷ (0) 0.00 x 5.00 (10)

ABBO²⁸ (10) 0.10 x 0.15 (10)

NBBO²⁹ (10) 0.10 x 0.15 (10)

Market order to sell 20 contracts is received by the Exchange.

²⁶ See proposed Rule 519(a)(1)(vi).

²⁷ The term "EBBO" means the best bid or offer on the Exchange. See Exchange Rule 100.

²⁸ The term "ABBO" or "Away Best Bid or Offer" means the best bid(s) or offer(s) disseminated by other Eligible Exchanges (defined in Rule 1400(g)) and calculated by the Exchange based on market information received by the Exchange from OPRA. See Exchange Rule 100.

²⁹ The term "NBBO" means the national best bid or offer as calculated by the Exchange based on market information received by the Exchange from OPRA. See Exchange Rule 100.

The Exchange routes the order to the away exchange by sending a limit order to sell 10 contracts at \$0.10 (the route price).

The order is executed on the away exchange, sell 10 at \$0.10, and the away market becomes zero bid.

EBBO: (0) 0.00 x 5.00 (10)

ABBO: (0) 0.00 x 0.15 (10)

NBBO: (0) 0.00 x 0.15 (10)

Using the Member selected Threshold Setting of \$0.25 to reevaluate the order, the remainder of the order (10 contracts) would be converted to a limit order to sell with a time in force of day, and placed on the Exchange as the national best offer (\$0.15) (and the route price of \$0.10) is less than or equal to the Member selected Threshold Setting of \$0.25. The 10 contracts would then be displayed on the Exchange at an offer price of one minimum trading increment or \$0.05.

EBBO: (0) 0.00 x 0.05 (10)

ABBO: (0) 0.00 x 0.15 (10)

NBBO: (0) 0.00 x 0.05 (10)

If the Exchange default Threshold Setting (\$0.10) was used for the reevaluation, the remainder of the order (10 contracts) would be converted to a limit order to sell with a time in force of day, and placed on the Exchange, as the route price of \$0.10 is equal to the Exchange Threshold Setting of \$0.10. The 10 contracts would then be displayed on the Exchange at an offer price of one minimum trading increment or \$0.05.

Example 2

MPV: \$0.05

Exchange default Threshold Setting: \$0.10

Member selected Threshold Setting: \$0.25

EBBO (0) 0.00 x 5.00 (10)

ABBO (10) 0.40 x 0.50 (10)

NBBO (10) 0.40 x 0.50 (10)

Market order to sell 20 contracts is received by the Exchange. The Exchange is zero bid for that series and routes the order to the away exchange by sending a limit order to sell 10 at \$0.40 (the route price).

The order is executed on the away exchange, sell 10 at \$0.40, and the away market becomes zero bid.

EBBO: (0) 0.00 x 5.00 (10)

ABBO: (0) 0.00 x 0.50 (10)

NBBO: (0) 0.00 x 0.50 (10)

Using the Member selected Threshold Setting of \$0.25 to reevaluate the order, the remainder of the order (10 contracts) would be cancelled as both (i) the route price (\$0.40) and (ii) the national best offer (\$0.50) are greater than the Threshold Setting (\$0.25).

Implementation Date

The Exchange plans to implement the proposed rule change in Q4 of 2022 and will announce the implementation date to its Members via Regulatory Circular.

b. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act³⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act³¹ in particular, in that it is 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 mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes its proposal promotes just and equitable principles of trade, removes impediments to and perfects the mechanisms of a free and open market and a national market system, and in general, protects investors and the public interest by allowing Members to establish the Threshold Setting for the evaluation of market orders to sell when the national best bid is zero. The Exchange believes that allowing Members to determine the Threshold Setting provides greater flexibility and allows the Member to tailor the Threshold Setting to the business and risk tolerances of the Member. Providing Members with the flexibility to determine their own

³⁰ 15 U.S.C. 78f(b).

³¹ 15 U.S.C. 78f(b)(5).

Threshold Setting may increase the opportunity for investors to receive an execution, to the benefit of investors; or, if an order that is evaluated under the proposed evaluation and reevaluation criteria in the proposal is rejected, investors are protected from receiving an execution at a potentially unwanted price.

The Exchange believes its proposal to allow Members the flexibility to establish their own pre-set value to be used for evaluation purposes of market orders to sell when the national best bid is zero allows Members to align their risk protections with their risk tolerance. Members have the discretion to set their pre-set value to whatever value best aligns to their risk profile, which may be as low as \$0.00.³² The Exchange provides Members the ability to tailor risk protection functionality to the risk profile of the Member, and has allowed Members to customize their risk protection settings for other risk protections. Specifically, the Exchange allows Members to set the maximum size of an order for the purposes of the MIAX Emerald Order Monitor Order Size Protection,³³ and if the maximum size of an order is not designated by the Member, the Exchange provides an Exchange defined default value.³⁴ Additionally, the Exchange provides Members the

³² The Exchange notes that the Nasdaq Phlx Zero-Bid Option Series rule, does not have a threshold evaluation and provides that, “[i]n the case where the bid price for any options series is \$0.00, a Market Order accepted into the System to sell that series shall be considered a Limit Order to sell at a price equal to the minimum trading increment as defined in [Nasdaq Phlx] Options 3, Section 3. Orders will be placed on the Limit Order book in the order in which they were received by the System. With respect to Market Orders to sell which are submitted prior to the Opening Process and persist after the Opening Process, those orders are posted at a price equal to the minimum trading increment as defined in Options 3, Section 3.” See Nasdaq Phlx Options 3, Section 10(b).

³³ See Exchange Rule 519(b).

³⁴ See MIAX Emerald Regulatory Circular 2019-20, Mandatory Usage of MIAX Order Monitor Protections (February 28, 2019) available at https://www.miaxoptions.com/sites/default/files/circular-files/MIAX_Emerald_RC_2019_20.pdf.

option to set a price protection limit on a per order basis,³⁵ and orders received without a price protection limit specified receive the Exchange defined default value.³⁶ The current proposal to allow Members to determine a pre-set value to be used as the Threshold Setting continues the Exchange's approach of allowing a Member to customize its risk protections to better align to the risk tolerance of the Member.

The Exchange believes its proposal to reorganize the current rule text to describe each scenario separately (i.e., evaluation of a market order to sell when the national best bid is zero and the national best offer is less than or equal to the Threshold Setting (proposed paragraph (ii)); reevaluation of a market order to sell when the national best bid becomes zero and either the trade price, route price, or national best offer is less than or equal to the Threshold Setting (proposed paragraph (iii)); initial evaluation of a market order to sell when the national best bid is zero and the national best offer is greater than the Threshold Setting (proposed paragraph (v)); and reevaluation of a market order to sell when the national best bid becomes zero and the national best offer is greater than the Threshold Setting (proposed paragraph (vi))) better organizes the rule text. The Exchange believes discussing each scenario separately and describing the evaluations that are performed by the System to determine the proper disposition of the order provides transparency and clarity in the Exchange's rules.

The Exchange believes its proposal promotes just and equitable principles of trade, removes impediments to and perfects the mechanisms of a free and open market and a national market system, and in general, protects investors and the public interest by providing additional

³⁵ See Exchange Rule 515(c)(1).

³⁶ See MIAX Emerald Regulatory Circular 2019-17, MIAX Emerald Price Protection Process (February 28, 2019) available at https://www.miaxoptions.com/sites/default/files/circular-files/MIAX_Emerald_RC_2019_17.pdf.

detail regarding the Exchange's process for reevaluating market orders to sell when the national best bid becomes zero. The Exchange believes it is in the interest of investors and the public to accurately describe the behavior of the Exchange's System in its rules as this information may be used by investors to make decisions concerning the submission of their orders. Transparency and clarity are consistent with the Act because it removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest by accurately describing how market orders to sell in zero bid series are handled on the Exchange. It is in the public interest for rules to be accurate and concise so as to eliminate the potential for confusion.

Additionally, the Exchange believes its proposal promotes just and equitable principles of trade, removes impediments to and perfects the mechanisms of a free and open market and a national market system, and in general, protects investors and the public interest by re-organizing the rule text for ease of reference. The Exchange believes that Exchange rules should be clear and transparent so as to avoid the potential for confusion.

4. 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 does not believe that its proposal will impose any burden on intra-market competition as all Members that submit market orders to the Exchange will be treated equally and the Rules of the Exchange apply equally to all Exchange Members. Additionally, the proposal allows each Member to determine the pre-set value to be used as the Threshold Setting and allows each Member to align their Threshold Setting to their risk tolerance. The Exchange's proposal does not impose a burden on intra-market competition as all Members have the flexibility to

determine their own Threshold Setting and the application of the rule is applied uniformly to all Members.

The Exchange does not believe that its proposal will impose any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange's proposal is not a competitive filing but one that provides Members the flexibility to determine their own Threshold Setting and also provides additional detail regarding the Exchange's process for reevaluating market orders to sell when the national bid becomes zero. Other options exchanges have an equal opportunity to modify their systems to offer similar functionality.

Additionally, the non-substantive changes proposed by the Exchange will have no impact on competition as they provide additional clarity and detail in the Exchange's rules and are not changes made for any competitive purpose.

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

The Exchange has neither solicited nor received comments on the proposed rule change.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Pursuant to Section 19(b)(3)(A) of the Act³⁷ and Rule 19b-4(f)(6)³⁸ thereunder, the Exchange has designated this proposal as one that effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant

³⁷ 15 U.S.C. 78s(b)(3)(A).

³⁸ 17 CFR 240.19b-4(f)(6).

burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

The Exchange's proposal is substantially similar to a rule operative on the Exchange's affiliate, MIAX Options,³⁹ and is similar to the rules of other options exchanges.⁴⁰ Additionally, the Exchange's proposal does not significantly affect the protection of investors or the public interest but rather promotes the protection of investors and the public interest by allowing Members to establish their own pre-set value to be used as the Threshold Setting in accordance with their business and risk tolerances. The Exchange is converting its current Threshold Setting of \$0.10 to become the default Threshold Setting and for those Members that choose not to establish their own Threshold Setting there will be no change in behavior under the proposed rule.

Providing Members with the flexibility to determine their own Threshold Setting may increase the opportunity for investors to receive an execution, to the benefit of investors; or, if an order that is evaluated under the proposed evaluation and reevaluation criteria in the proposal is rejected, investors are protected from receiving an execution at a potentially unwanted price. Additionally, the Exchange's proposal provides additional detail regarding the Exchange's order handling process for a market order to sell when the national best bid becomes zero which

³⁹ See MIAX Options Exchange Rule 519(a)(1).

⁴⁰ See Cboe Rule 5.34(a)(1)(A) which provides, “[i]f the System receives a sell market order in a series after it is open for trading with an NBB of zero: (i) if the NBO in the series is less than or equal to \$0.50, then the System converts the market order to a limit order with a limit price equal to the minimum trading increment applicable to the series and enters the order into the Book with a timestamp based on the time it enters the Book. If the order has a Time-in-Force of GTC or GTD that expires on a subsequent day, the order remains on the Book as a limit order until it executes, expires, or the User cancels it. (ii) if the NBO in the series is greater than \$0.50, then the System cancels or rejects the market order, or routes the market order to PAR for manual handling, subject to a User's instructions;” See also MIAX Pearl Options Rule 519(a)(1).

promotes the protection of investors by clearly describing when the System will accept or reject a market order to sell when the national best bid is zero, or becomes zero. Transparency and clarity in the Exchange's Rules promotes the protection of investors and the public interest as clearly describing order handling behavior aids investors in their order routing decision making process.

The Exchange does not believe that the proposed rule change imposes any significant burden on competition as the proposed rule change is substantially similar to a rule currently operative on the Exchange's affiliate, MIAX Options⁴¹ and is similar to the rules of at least one other exchange.⁴² Additionally, all Members will be eligible to establish their own pre-set value to be used as the Threshold Setting and all market orders to sell an option when the national best bid is, or becomes, zero will be handled in a similar fashion under the Exchange's proposal, as the Rules of the Exchange are applied equally to all Members of the Exchange.

Therefore, the Exchange believes that the proposed rule change is well-suited for, and meets the standards applicable to, the Commission's treatment of non-controversial proposals under Section 19(b)(3)(A) of the Act⁴³ and Rule 19b-4(f)(6) thereunder.⁴⁴

Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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. Furthermore, a proposed rule change filed pursuant to

⁴¹ See supra note 39.

⁴² See supra note 40.

⁴³ 15 U.S.C. 78s(b)(3)(A).

⁴⁴ 17 CFR 240.19b-4(f)(6).

Rule 19b-4(f)(6) under the Act⁴⁵ normally does not become operative for 30 days after the date of its filing.

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.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

The proposed rule change is substantially similar to a rule operative on the Exchange's affiliate, MIAX Options.⁴⁶

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

1. Notice of proposed rule for publication in the Federal Register.

5. Text of proposed rule change.

⁴⁵ 17 CFR 240.19b-4(f)(6).

⁴⁶ See MIAX Options Exchange Rule 519(a)(1).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-EMERALD-2022-28)

September __, 2022

Self-Regulatory Organizations: Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by MIAX Emerald, LLC to Amend Exchange Rule 519, MIAX Emerald Order Monitor

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 9, 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 proposes to amend Exchange Rule 519, MIAX Emerald Order Monitor.

The text of the proposed rule change is available on the Exchange’s website at <http://www.miaxoptions.com/rule-filings/emerald> 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 Exchange Rule 519, MIAX Emerald Order Monitor to (i) establish an Exchange default Threshold Setting for market orders³ to sell an option when the national best bid is zero; (ii) provide that a Member⁴ may supply their own pre-set value to be used as the Threshold Setting; (iii) reorganize the rule text for ease of reference; and (iv) adopt new rule text to add additional detail regarding the Exchange's process for evaluating and reevaluating market orders to sell. The Exchange notes that its proposal harmonizes the operation of Rule 519 to that of its affiliate exchanges, MIAX Options and MIAX Pearl that have recently amended this rule.⁵

Background

Currently, in order to avoid the occurrence of potential obvious or catastrophic errors on the Exchange the MIAX Emerald Order Monitor will prevent certain orders from executing or being placed on the Book⁶ at prices outside pre-set standard limits. Beginning after the Opening

³ A market order is an order to buy or sell a stated number of option contracts at the best price available at the time of execution. See Exchange Rule 516(a).

⁴ 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.

⁵ See Securities Exchange Act Release Nos. 95001 (May 27, 2022), 87 FR 33854 (June 3, 2022) (SR-MIAX-2022-22); and 95000 (May 27, 2022), 87 FR 33862 (June 3, 2022) (SR-PEARL-2022-22).

⁶ The term "Book" means the electronic book of buy and sell orders and quotes maintained by the System. See Exchange Rule 100.

Process⁷ is complete, the MIAX Emerald Order Monitor is operational each trading day until the close of trading.⁸ Exchange Rule 519(a)(1)(i) provides that if the Exchange upon initial receipt or reevaluation⁹ evaluates a market order to sell an option when the national best bid is zero and the Exchange's disseminated offer is equal to or less than \$0.10, the System¹⁰ will convert the market order to sell to a limit order to sell with a limit price of one minimum trading increment.¹¹ In this case, such sell orders will automatically be placed on the Book in time priority and will be displayed at the appropriate Minimum Price Variation.¹² Exchange Rule 519(a)(1)(ii) provides that if the Exchange upon initial receipt or reevaluation evaluates a market order to sell an option when the national best bid is zero and the national best offer is greater than \$0.10, the System will cancel the market order to sell.

Proposal

The Exchange now proposes to allow Members to determine their own pre-set value to be used as the threshold setting ("Threshold Setting") that the Exchange will use when evaluating market orders to sell when the national best bid is zero and the national best offer is less than, equal to, or greater than, the Threshold Setting. Members are not constrained by the Exchange in determining their Threshold Setting and may set the threshold at any value in accordance to their

⁷ See Exchange Rule 503.

⁸ See Exchange Rule 519(a).

⁹ A reevaluation of an order occurs when an order has been partially filled on the Exchange, or has been routed to an away exchange and is returned to the Exchange partially or completely unfilled, and the resulting national best bid is zero.

¹⁰ The term "System" means the automated trading system used by the Exchange for the trading of securities. See Exchange Rule 100.

¹¹ See Exchange Rule 510.

¹² See Exchange Rule 510(a).

business and risk tolerances. Members will communicate their desired threshold value to the Exchange's Help Desk.¹³

Specifically, the Exchange proposes to adopt new subparagraph (i) to paragraph (a)(1) of Rule 519 to provide that, “[f]or the purposes of this Rule a Member may establish a pre-set value to be used as the Threshold Setting by communicating its value to the Exchange's Help Desk in a form and manner to be determined by the Exchange and communicated via Regulatory Circular.¹⁴ The Exchange will establish a default Threshold Setting of \$0.10¹⁵ and communicate its value to Members via Regulatory Circular. If a Member does not establish a Threshold Setting the Exchange default value will be used.” Currently, the Exchange uses a value of \$0.10 as its threshold value for purposes of evaluating or reevaluating market orders to sell when the national best bid is zero.¹⁶

The Exchange proposes to adopt new subparagraph (ii) to paragraph (a)(1) of Rule 519 to provide that, if the Exchange receives a market order to sell an option when the national best bid is zero and the national best offer is less than or equal to the Threshold Setting, the System will convert the market order to sell, to a limit order to sell, with a limit price of one minimum trading increment.¹⁷ The Exchange proposes to use the national best offer as the reference price in determining how to handle a market order to sell when the national best bid is zero as the

¹³ The term “Help Desk” means the Exchange's control room consisting of Exchange staff authorized to make certain determinations on behalf of the Exchange. The Help Desk shall report to and be supervised by a senior executive of the Exchange. See Exchange Rule 100.

¹⁴ Requests to establish a Threshold Setting are received by the Help Desk and are processed for implementation on the next trading day.

¹⁵ The Exchange proposes to convert its current \$0.10 threshold setting to the Exchange default Threshold Setting.

¹⁶ See Exchange Rule 519(a)(1)(i) and (ii).

¹⁷ See Exchange Rule 510, Minimum Price Variations and Minimum Trading Increments.

national best offer better represents the current market conditions.¹⁸ This provision is consistent with the operation of the current rule, however the Threshold Setting used for evaluation purposes under the Exchange's proposal may now be either the Exchange's default setting of \$0.10 or the Member's Threshold Setting.

The Exchange proposes to adopt new subparagraph (iii) to paragraph (a)(1) of Rule 519 to provide that, if the Exchange reevaluates a market order to sell an option when the resulting national best bid is zero and either the trade price, route price, or national best offer is less than or equal to the Threshold Setting, the System will convert the market order to sell, to a limit order to sell, with a limit price of one minimum trading increment.¹⁹ For the purposes of this rule, the execution price of a trade in the subject series is considered the "trade price." In the event the Exchange receives a market order to sell and the Exchange is zero bid but an away market is not, the Exchange will route the order to that away exchange at the away market price, the "route price." The Exchange uses the route price, trade price, or national best offer to determine the proper disposition of a market order to sell when the national best bid becomes zero.

Current paragraph (i) describes the initial evaluation and reevaluation process of a market order to sell whereas each process is given separate treatment under this proposal. Specifically, new proposed paragraph (ii) describes the initial evaluation process of a market order to sell when the national best bid is zero and new proposed paragraph (iii) describes the reevaluation process of a market order to sell when the national best bid becomes zero. The Exchange

¹⁸ The Exchange notes that its current rule uses the Exchange's disseminated offer for evaluation purposes however the Exchange proposes to use the national best offer for consistency and uniform application of the proposed rule.

¹⁹ Market orders converted to limit orders under Rule 519 are posted to the Book with a time in force of Day.

believes this format provides additional clarity to the Exchange's rules regarding its order handling process when the Exchange reevaluates a market order to sell when the national best bid becomes zero.

The Exchange proposes to adopt new subparagraph (iv) to paragraph (a)(1) of Rule 519 to provide that, in either case of (ii) or (iii) above, such sell orders will automatically be placed on the Book in time priority and will be displayed at the appropriate Minimum Price Variation.²⁰ The Exchange notes that this language is substantially similar to the current rule text.²¹

The Exchange proposes to adopt new subparagraph (v) to paragraph (a)(1) of Rule 519 to provide that, if the Exchange receives a market order to sell an option when the national best bid is zero and the national best offer is greater than the Threshold Setting, the System will reject²² the order. This provision is consistent with the operation of the current rule, however under the Exchange's proposal the Threshold Setting used for evaluation purposes may now be either the Exchange default setting of \$0.10 or the Member's Threshold Setting.

The Exchange proposes to adopt new subparagraph (vi) to paragraph (a)(1) of Rule 519 to provide that, if the Exchange reevaluates a market order to sell an option when the resulting national best bid is zero and both (A) the trade price or route price, and (B) the national best offer, are greater than the Threshold Setting, the System will reject the order or cancel any unexecuted balance of the order. The Exchange uses the route price or trade price, in

²⁰ See Exchange Rule 510(a).

²¹ See Exchange Rule 519(a)(1)(i).

²² The current rule provides that the Exchange will cancel the order however the Exchange is proposing to provide additional clarity to distinguish order handling in the rule text in this proposal. An order that is rejected has not been accepted by the System, whereas an order that is cancelled has been accepted by the System.

conjunction with the national best offer to determine the proper disposition of a market order to sell when the national best bid becomes zero.

Proposed paragraphs (iii) and (vi) both address the reevaluation process. A market order to sell may be partially executed on the Exchange and reevaluated by the Exchange, and may also be routed to an away Exchange and then reevaluated by the Exchange. The first scenario occurs when the Exchange receives a market order to sell and the Exchange is not zero bid, but away exchanges are. In this scenario, the Exchange will execute the order on the Exchange and the execution price will be the “trade price.” In the event that there is still interest remaining of the order, and the national best bid is zero, the Exchange will reevaluate the order using the trade price. If the trade price or the national best offer price is less than or equal to the Threshold Setting, the System will convert the market order to sell, to a limit order to sell, with a limit price of one minimum increment.²³ If the trade price and the national best offer price are greater than the Threshold Setting, the System will cancel any unexecuted balance of the order.²⁴

The second scenario occurs when the Exchange receives a market order to sell and the Exchange is zero bid but away exchanges are not. The Exchange will route the order to the away exchange, if the order is returned to the Exchange and the national best bid becomes zero, the Exchange will reevaluate the order using the route price. If the route price or national best offer is less than or equal to the Threshold Setting, the System will convert the market order to sell, to a limit order to sell, with a limit price of one minimum trading increment.²⁵ If the route price

²³ See proposed Rule 519(a)(1)(iii).

²⁴ See proposed Rule 519(a)(1)(vi).

²⁵ See proposed Rule 519(a)(1)(iii).

and the national best offer are greater than the Threshold Setting, the System will reject the order or cancel any unexecuted balance of the order.²⁶

In proposed paragraph (vi) the Exchange believes considering both the route price or trade price, and the national best offer, provides a clear indication of the current market conditions when either the route price or trade price and the national best offer is greater than the Threshold Setting and allows the Exchange to make the proper determination regarding the disposition of the order.

The proposed rule text provides additional detail regarding the System's behavior when the Exchange reevaluates a market order to sell and the national best bid has become zero. Example 1 below describes the System processing when the national best offer is below the Threshold Setting, and Example 2 describes the System processing when the national best offer is above the Threshold Setting.

Example 1

MPV: \$0.05

Exchange default Threshold Setting: \$0.10

Member selected Threshold Setting: \$0.25

EBBO²⁷ (0) 0.00 x 5.00 (10)

ABBO²⁸ (10) 0.10 x 0.15 (10)

NBBO²⁹ (10) 0.10 x 0.15 (10)

Market order to sell 20 contracts is received by the Exchange.

The Exchange routes the order to the away exchange by sending a limit order to sell

²⁶ See proposed Rule 519(a)(1)(vi).

²⁷ The term "EBBO" means the best bid or offer on the Exchange. See Exchange Rule 100.

²⁸ The term "ABBO" or "Away Best Bid or Offer" means the best bid(s) or offer(s) disseminated by other Eligible Exchanges (defined in Rule 1400(g)) and calculated by the Exchange based on market information received by the Exchange from OPRA. See Exchange Rule 100.

²⁹ The term "NBBO" means the national best bid or offer as calculated by the Exchange based on market information received by the Exchange from OPRA. See Exchange Rule 100.

10 contracts at \$0.10 (the route price).

The order is executed on the away exchange, sell 10 at \$0.10, and the away market becomes zero bid.

EBBO: (0) 0.00 x 5.00 (10)

ABBO: (0) 0.00 x 0.15 (10)

NBBO: (0) 0.00 x 0.15 (10)

Using the Member selected Threshold Setting of \$0.25 to reevaluate the order, the remainder of the order (10 contracts) would be converted to a limit order to sell with a time in force of day, and placed on the Exchange as the national best offer (\$0.15) (and the route price of \$0.10) is less than or equal to the Member selected Threshold Setting of \$0.25. The 10 contracts would then be displayed on the Exchange at an offer price of one minimum trading increment or \$0.05.

EBBO: (0) 0.00 x 0.05 (10)

ABBO: (0) 0.00 x 0.15 (10)

NBBO: (0) 0.00 x 0.05 (10)

If the Exchange default Threshold Setting (\$0.10) was used for the reevaluation, the remainder of the order (10 contracts) would be converted to a limit order to sell with a time in force of day, and placed on the Exchange, as the route price of \$0.10 is equal to the Exchange Threshold Setting of \$0.10. The 10 contracts would then be displayed on the Exchange at an offer price of one minimum trading increment or \$0.05.

Example 2

MPV: \$0.05

Exchange default Threshold Setting: \$0.10

Member selected Threshold Setting: \$0.25

EBBO (0) 0.00 x 5.00 (10)

ABBO (10) 0.40 x 0.50 (10)

NBBO (10) 0.40 x 0.50 (10)

Market order to sell 20 contracts is received by the Exchange. The Exchange is zero bid for that series and routes the order to the away exchange by sending a limit order to sell 10 at \$0.40 (the route price).

The order is executed on the away exchange, sell 10 at \$0.40, and the away market becomes zero bid.

EBBO: (0) 0.00 x 5.00 (10)

ABBO: (0) 0.00 x 0.50 (10)

NBBO: (0) 0.00 x 0.50 (10)

Using the Member selected Threshold Setting of \$0.25 to reevaluate the order, the remainder of the order (10 contracts) would be cancelled as both (i) the route price

(\$0.40) and (ii) the national best offer (\$0.50) are greater than the Threshold Setting (\$0.25).

Implementation Date

The Exchange plans to implement the proposed rule change in Q4 of 2022 and will announce the implementation date to its Members via Regulatory Circular.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act³⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act³¹ in particular, in that it is 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 mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes its proposal promotes just and equitable principles of trade, removes impediments to and perfects the mechanisms of a free and open market and a national market system, and in general, protects investors and the public interest by allowing Members to establish the Threshold Setting for the evaluation of market orders to sell when the national best bid is zero. The Exchange believes that allowing Members to determine the Threshold Setting provides greater flexibility and allows the Member to tailor the Threshold Setting to the business and risk tolerances of the Member. Providing Members with the flexibility to determine their own Threshold Setting may increase the opportunity for investors to receive an execution, to the benefit

³⁰ 15 U.S.C. 78f(b).

³¹ 15 U.S.C. 78f(b)(5).

of investors; or, if an order that is evaluated under the proposed evaluation and reevaluation criteria in the proposal is rejected, investors are protected from receiving an execution at a potentially unwanted price.

The Exchange believes its proposal to allow Members the flexibility to establish their own pre-set value to be used for evaluation purposes of market orders to sell when the national best bid is zero allows Members to align their risk protections with their risk tolerance. Members have the discretion to set their pre-set value to whatever value best aligns to their risk profile, which may be as low as \$0.00.³² The Exchange provides Members the ability to tailor risk protection functionality to the risk profile of the Member, and has allowed Members to customize their risk protection settings for other risk protections. Specifically, the Exchange allows Members to set the maximum size of an order for the purposes of the MIAX Emerald Order Monitor Order Size Protection,³³ and if the maximum size of an order is not designated by the Member, the Exchange provides an Exchange defined default value.³⁴ Additionally, the Exchange provides Members the option to set a price protection limit on a per order basis,³⁵ and orders received without a price

³² The Exchange notes that the Nasdaq Phlx Zero-Bid Option Series rule, does not have a threshold evaluation and provides that, “[i]n the case where the bid price for any options series is \$0.00, a Market Order accepted into the System to sell that series shall be considered a Limit Order to sell at a price equal to the minimum trading increment as defined in [Nasdaq Phlx] Options 3, Section 3. Orders will be placed on the Limit Order book in the order in which they were received by the System. With respect to Market Orders to sell which are submitted prior to the Opening Process and persist after the Opening Process, those orders are posted at a price equal to the minimum trading increment as defined in Options 3, Section 3.” See Nasdaq Phlx Options 3, Section 10(b).

³³ See Exchange Rule 519(b).

³⁴ See MIAX Emerald Regulatory Circular 2019-20, Mandatory Usage of MIAX Order Monitor Protections (February 28, 2019) available at https://www.miaxoptions.com/sites/default/files/circular-files/MIAX_Emerald_RC_2019_20.pdf.

³⁵ See Exchange Rule 515(c)(1).

protection limit specified receive the Exchange defined default value.³⁶ The current proposal to allow Members to determine a pre-set value to be used as the Threshold Setting continues the Exchange's approach of allowing a Member to customize its risk protections to better align to the risk tolerance of the Member.

The Exchange believes its proposal to reorganize the current rule text to describe each scenario separately (i.e., evaluation of a market order to sell when the national best bid is zero and the national best offer is less than or equal to the Threshold Setting (proposed paragraph (ii)); reevaluation of a market order to sell when the national best bid becomes zero and either the trade price, route price, or national best offer is less than or equal to the Threshold Setting (proposed paragraph (iii)); initial evaluation of a market order to sell when the national best bid is zero and the national best offer is greater than the Threshold Setting (proposed paragraph (v)); and reevaluation of a market order to sell when the national best bid becomes zero and the national best offer is greater than the Threshold Setting (proposed paragraph (vi))) better organizes the rule text. The Exchange believes discussing each scenario separately and describing the evaluations that are performed by the System to determine the proper disposition of the order provides transparency and clarity in the Exchange's rules.

The Exchange believes its proposal promotes just and equitable principles of trade, removes impediments to and perfects the mechanisms of a free and open market and a national market system, and in general, protects investors and the public interest by providing additional detail regarding the Exchange's process for reevaluating market orders to sell when the national best bid becomes zero. The Exchange believes it is in the interest of investors and the public to

³⁶ See MIAX Emerald Regulatory Circular 2019-17, MIAX Emerald Price Protection Process (February 28, 2019) available at https://www.miaxoptions.com/sites/default/files/circular-files/MIAX_Emerald_RC_2019_17.pdf.

accurately describe the behavior of the Exchange's System in its rules as this information may be used by investors to make decisions concerning the submission of their orders. Transparency and clarity are consistent with the Act because it removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest by accurately describing how market orders to sell in zero bid series are handled on the Exchange. It is in the public interest for rules to be accurate and concise so as to eliminate the potential for confusion.

Additionally, the Exchange believes its proposal promotes just and equitable principles of trade, removes impediments to and perfects the mechanisms of a free and open market and a national market system, and in general, protects investors and the public interest by re-organizing the rule text for ease of reference. The Exchange believes that Exchange rules should be clear and transparent so as to avoid the potential for confusion.

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 does not believe that its proposal will impose any burden on intra-market competition as all Members that submit market orders to the Exchange will be treated equally and the Rules of the Exchange apply equally to all Exchange Members. Additionally, the proposal allows each Member to determine the pre-set value to be used as the Threshold Setting and allows each Member to align their Threshold Setting to their risk tolerance. The Exchange's proposal does not impose a burden on intra-market competition as all Members have the flexibility to determine their own Threshold Setting and the application of the rule is applied uniformly to all Members.

The Exchange does not believe that its proposal will impose any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange's proposal is not a competitive filing but one that provides Members the flexibility to determine their own Threshold Setting and also provides additional detail regarding the Exchange's process for reevaluating market orders to sell when the national bid becomes zero. Other options exchanges have an equal opportunity to modify their systems to offer similar functionality.

Additionally, the non-substantive changes proposed by the Exchange will have no impact on competition as they provide additional clarity and detail in the Exchange's rules and are not changes made for any competitive purpose.

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

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 Act³⁷ and Rule 19b-4(f)(6)³⁸ thereunder.

³⁷ 15 U.S.C. 78s(b)(3)(A).

³⁸ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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.

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](mailto:rule-comments@sec.gov). Please include File Number SR-EMERALD-2022-28 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-EMERALD-2022-28. 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-EMERALD-2022-28 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.³⁹

Vanessa Countryman
Secretary

³⁹ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

New text is underlined;
Deleted text is in [brackets]

MIAX Emerald Options Exchange Rules

Rule 519. MIAX Emerald Order Monitor

(a) **Order Price Protections.** In order to avoid the occurrence of potential obvious or catastrophic errors on the Exchange, the System will take the following steps in accordance with the MIAX Emerald Order Monitor, which will prevent certain orders from executing or being placed on the Book at prices outside pre-set standard limits. Beginning after the Opening Process is complete, the MIAX Emerald Order Monitor will be operational each trading day until the close of trading. The MIAX Emerald Order Monitor will not be operational during a trading halt.

(1) Market Orders to Sell.

(i) If the Exchange upon initial receipt or reevaluation evaluates a market order to sell an option when the national best bid is zero and the Exchange's disseminated offer is equal to or less than \$0.10, the System will convert the market order to sell to a limit order to sell with a limit price of one minimum trading increment. In this case, such sell orders will automatically be placed on the Book in time priority and will be displayed at the appropriate Minimum Price Variation.

(ii) If the Exchange upon initial receipt or reevaluation evaluates a market order to sell an option when the national best bid is zero and the national best offer is greater than \$0.10, the System will cancel the market order to sell.]

(i) Threshold Setting. For the purposes of this Rule a Member may establish a pre-set value to be used as the threshold setting ("Threshold Setting") by communicating its value to the Exchange's Help Desk in a form and manner to be determined by the Exchange and communicated via Regulatory Circular. The Exchange will establish a default Threshold Setting of \$0.10 and communicate its value to Members via Regulatory Circular. If a Member does not establish a Threshold Setting the Exchange default value will be used.

(ii) If the Exchange receives a market order to sell an option when the national best bid is zero and the national best offer is less than or equal to the Threshold Setting, the System will

convert the market order to sell, to a limit order to sell, with a limit price of one minimum trading increment.

(iii) If the Exchange reevaluates a market order to sell an option when the resulting national best bid is zero and either the trade price, route price, or national best offer is less than or equal to the Threshold Setting, the System will convert the market order to sell, to a limit order to sell, with a limit price of one minimum trading increment.

(iv) In either case of (ii) or (iii) above such sell orders will automatically be placed on the Book in time priority and will be displayed at the appropriate Minimum Price Variation.

(v) If the Exchange receives a market order to sell an option when the national best bid is zero and the national best offer is greater than the Threshold Setting, the System will reject the order.

(vi) If the Exchange reevaluates a market order to sell an option when the resulting national best bid is zero and both (A) the trade price or route price; and (B) the national best offer, are greater than the Threshold Setting, the System will reject the order or cancel any unexecuted balance of the order.
