Required fields are shown with yellow backgrounds and asterisks.

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

File No. * SR 2023 - * 02

Amendment No. (req. for Amendments *)

Filing by   MIAX Emerald, LLC

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

Initial * ☑	Amendment * ☐	Withdrawal ☐

Section 19(b)(2) * ☐	Section 19(b)(3)(A) * ☑	Section 19(b)(3)(B) * ☐

Pilot ☐	Extension of Time Period for Commission Action * ☐

Date Expires *

Rule

☐ 19b-4(f)(1)	☐ 19b-4(f)(4)
☐ 19b-4(f)(2)	☐ 19b-4(f)(5)
☐ 19b-4(f)(3)	☑ 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 531, Reports, Market Data Products and Services, to provide for the new Liquidity Taker Event Report Resting Simple Orders

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 * Chris	Last Name * Solgan

Title * Vice President, Senior Counsel

E-mail * csolgan@miami-holdings.com

Telephone * (609) 423-9414	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   01/18/2023

By   Chris Solgan
           (Name *)

(Title *)

Vice President, Senior Counsel

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.

Date: 2023.01.18
07:34:42 -05'00'

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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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-2023-02 Exhibit 1.docx

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 *

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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

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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-2023-02 - 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 Proposed Rule Change

(a) MIAX Emerald, LLC ("MIAX Emerald" or "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 531 to provide for the new "Liquidity Taker Event Report –

Resting Simple Orders".

A notice of the proposed rule change for publication in the Federal Register is attached

hereto as Exhibit 1. The proposed amendment to the Exchange's rules is attached 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 his designee pursuant to authority delegated by the MIAX Emerald Board of Directors of the

Exchange on June 16, 2022. Exchange staff will advise the Board of Directors of any action

taken pursuant to delegated authority. No other action by the Exchange is necessary for the

filing of the proposed rule change.

Questions and comments on the proposed rule change may be directed to Chris Solgan,

Vice President and Senior Counsel, at (609) 423-9414.

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 531 to provide for the new "Liquidity

Taker Event Report – Resting Simple Orders" (the "Report"). The proposed Report will be an

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[1]   15 U.S.C. 78s(b)(1).

[2]   17 CFR 240.19b-4.

optional product[3] available to Members.[4] Currently, the Exchange provides two types of

Liquidity Taker Event Reports, one including information about incoming orders seeking to

remove liquidity from the Simple Order Book[5] described under Exchange Rule 531(a), and a

second including the same information but about incoming Complex Orders that seek to remove

Complex Orders resting on the Strategy Book[6] described under Exchange Rule 531(b). Both of

these existing reports provide data for executions and contra-side responses that occurred within

200 microseconds of the time the resting order was received by the Exchange. But for the

modified timeframe and one difference described below, the proposed Report would include the

same data as the Liquidity Taker Event Report for Simple Orders but would focus on executions

and contra-side responses that occurred after 200 microseconds of the time the resting order was

received by the Exchange and within 200 microseconds of receipt of the first attempt to execute

against the resting order after the initial 200 microsecond time period has expired as described

further below.

     Like for the existing reports, the Exchange believes the additional data points from the

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[3]   The Exchange intends to submit a separate filing with the Commission pursuant to Section 19(b)(1) to propose fees for the Liquidity Taker Event Report – Resting Simple Orders.

[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]   The term "Simple Order Book" means "the Exchange's regular electronic book of orders and quotes." See Exchange Rule 518(a)(15).

[6]   The term "Complex Strategy" means "a particular combination of components and their ratios to one another. New complex strategies can be created as the result of the receipt of a complex order or by the Exchange for a complex strategy that is not currently in the System." See Exchange Rule 518(a)(6). The term "Strategy Book" means the Exchange's electronic book of complex orders and complex quotes. See Exchange Rule 518(a)(17). The Strategy Book is organized by Complex Strategy in that individual orders for a defined Complex Strategy are organized together in a book that is separate from the orders for a different Complex Strategy.

matching engine outlined below for the proposed Report may also help Members gain a better understanding about their interactions with the Exchange. The Exchange believes the proposed Report will provide Members with an opportunity to learn more about better opportunities to access liquidity and receive better execution rates. The proposed Report will increase transparency and democratize information so that all firms that subscribe to the Report have access to the same information on an equal basis, even for firms that do not have the appropriate resources to generate a similar report regarding interactions with the Exchange. Like the existing reports, none of the components of the proposed Report include real-time market data.

Members generally would use a liquidity accessing order if there is a high probability that it will execute against an order resting on the Simple Order Book. Like the existing reports, the proposed Report would identify by how much time an order that may have been marketable missed an execution but would focus on a later timeframe than the existing reports. The proposed Report will provide greater visibility into the missed trading execution, which will allow Members to optimize their models and trading patterns to yield better execution results.

Like the existing reports, the proposed Report will be a Member-specific report and will help Members to better understand by how much time a particular order missed executing against a specific resting order, thus allowing that Member to determine whether it wants to invest in the necessary resources and technology to mitigate missed executions against certain resting orders on the Simple Order Book. Like the existing reports, the Exchange proposes to provide the Report on a T+1 basis. As further described below, the proposed Report will be specific and tailored to the Member that is subscribed to the Report and any data included in the Report that relates to a Member other than the Member receiving the Report will be anonymized.

The Exchange proposes to provide the proposed Report in response to additional Member

demand for data concerning the timeliness of their incoming orders and executions against

certain resting orders that have been resting on the Simple Order Book for at least 200

microseconds and within 200 microseconds of receipt of the first attempt to execute against the

resting order after the initial 200 microsecond time period has expired.. Certain Members that

subscribe to the existing reports have requested the same information as the Simple Order report

but for the later timeframe described herein so that they can better understand the timeliness of

their incoming orders and efficacy of their attempts to execute against resting liquidity on the

Exchange's Simple Order Book. The purpose of the proposed Report is to provide Members the

necessary data in a standardized format on a T+1 basis to those that subscribe to the Report on an

equal basis.

Proposed Exchange Rule 531(c) would provide that the Report is a daily report that

provides a Member ("Recipient Member") with its liquidity response time details for executions

of an order resting on the Book, where that Recipient Member attempted to execute against such

resting order within an extended timeframe that meets certain criteria described below.[7]

Report Content

The content of the proposed Report is basically identical to that of the existing Liquidity

Taker Event Report for Simple Orders described under Exchange Rule 531(a) with two

differences. The first difference is the timeframe of the proposed Report mentioned above and

described in more detail below. The second difference is that, unlike the existing Liquidity

Taker Event Report for Simple Orders, the proposed Report would not include the time

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[7]   The Exchange proposes to renumber current Exchange Rule 531(c), Market Data
        Products, as Exchange Rule 531(d), and current Exchange Rule 531(d), High Precision
        Network Time Signal Service ("HPNTSS"), as Exchange Rule 531(e). The Exchange
        does not propose to amend the rule text of either rule.

difference between the time the resting order was received by the Exchange and the time the first

response that executes against the resting order was received by the Exchange. Each of these

differences are described below. All other aspects of the proposed Report are identical to the

existing Liquidity Taker Event Report for Simple Orders described under Exchange Rule 531(a).

Like current paragraph (a)(1) of Exchange Rule 531 for the existing Liquidity Taker

Event Report for Simple Orders, proposed paragraph (c)(1) of Rule 531 would describe the

content of the proposed Report and delineate which information would be provided regarding the

resting order,[8] the response that successfully executed against the resting order, and the response

submitted by the Recipient Member that missed executing against the resting order. It is

important to note that the content of the Report will be specific to the Recipient Member and the

Report will not include any information related to any Member other than the Recipient Member,

other than certain information about the resting order described below. The Exchange will

restrict all other market participants, including the Recipient Member, from receiving another

market participant's data.

Resting Order Information. Like current paragraph (a)(1)(i) of Exchange Rule 531 for

the existing Liquidity Taker Event Report for Simple Orders, proposed Exchange Rule

531(c)(1)(i) would provide that the following information would be included in the Report

regarding the resting order: (A) the time the resting order was received by the Exchange;[9] (B)

symbol; (C) order reference number, which is a unique reference number assigned to a new order

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[8]   Only displayed orders will be included in the Report. The Exchange notes that it does
        not currently offer any non-displayed orders types on its options trading platform.

[9]   The time the Exchange received the resting order would be in nanoseconds and is the
        time the resting order was received by the Exchange's System.

at the time of receipt; (D) whether the Recipient Member is an Affiliate[10] of the Member that

entered the resting order[11]; (E) origin type (<u>e.g.</u>, Priority Customer,[12] Market Maker[13]); (F) side

(buy or sell); and (G) displayed price and size of the resting order.[14]

 Execution Information. Like current paragraph (a)(1)(ii) of Exchange Rule 531 for the

existing Liquidity Taker Event Report for Simple Orders, proposed Exchange Rule 531(c)(1)(ii)

would provide that the following information would be included in the Report regarding the

execution of the resting order: (A) the EBBO[15] at the time of execution;[16] (B) the ABBO[17] at the

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[10] The term "affiliate" of or person "affiliated with" another person means a person who, directly, or indirectly, controls, is controlled by, or is under common control with, such other person. <u>See</u> Exchange Rule 100.

[11] The Report will simply indicate whether the Recipient Member is an Affiliate of the Member that entered the resting order and not include any other information that may indicate the identity of the Member that entered the resting order.

[12] The term "Priority Customer" means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). The number of orders shall be counted in accordance with Interpretation and Policy .01 to Exchange Rule 100. <u>See</u> Exchange Rule 100.

[13] The term "Market Maker" refers to "Lead Market Makers", "Primary Lead Market Makers" and "Registered Market Makers" collectively. <u>See</u> Exchange Rule 100.

[14] The Exchange notes that the displayed price and size are also disseminated via the Exchange's proprietary data feeds and the Options Price Reporting Authority ("OPRA"). The Exchange also notes that the displayed price of the resting order may be different than the ultimate execution price. This may occur when a resting order is displayed and ranked at different prices upon entry to avoid a locked or crossed market.

[15] The term "EBBO" means the best bid or offer on the Exchange. <u>See</u> Exchange Rule 100.

[16] Exchange Rule 531(c)(1)(ii)(A) would further provide that if the resting order executes against multiple contra-side responses, only the EBBO at the time of the execution against the first response will be included.

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

time of execution;[18] (C) the time first response that executes against the resting order was received by the Exchange and the size of the execution and type of the response;[19] and (D) whether the response was entered by the Recipient Member. If the resting order executes against multiple contra-side responses, only the EBBO and ABBO at the time of the execution against the first response will be included.

Exchange Rule 531(a)(1)(ii)(D) provides that the existing Liquidity Taker Event Report for Simple Orders also includes the time difference between the time the resting order was received by the Exchange and the time the first response that executes against the resting order was received by the Exchange. The proposed Report would not include the same information because that timeframe could be for an extended period of time since the proposed Report focuses on orders that have been resting on the Simple Order Book for longer than 200 microseconds and, therefore, the Exchange believes is less likely to be valuable to the Recipient Member.

Recipient Member's Response Information. Like current paragraph (a)(1)(iii) of Exchange Rule 531 for the existing Liquidity Taker Event Report for Simple Orders, proposed Rule 531(c)(1)(iii) would provide that the following information would be included in the Report regarding response(s) sent by the Recipient Member: (A) Recipient Member identifier; (B) the time difference between the time the first response that executes against the resting order was received by the Exchange and the time of each response sent by the Recipient Member,

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[18]   Exchange Rule 531(c)(1)(ii)(B) would further provide that if the resting order executes against multiple contra-side responses, only the ABBO at the time of the execution against the first response will be included.

[19]   The time the Exchange received the response order would be in nanoseconds and would be the time the response was received by the Exchange's network, which is before the time the response would be received by the System.

regardless of whether it executed or not;[20] (C) size and type of each response submitted by
Recipient Member; and (D) response reference number, which is a unique reference number
attached to the response by the Recipient Member.

Timeframe for Data Included in Report

The timeframe covered by the proposed Report is the primary difference between it and
the existing Liquidity Taker Event Report for Simple Orders. The existing Liquidity Taker
Event Report for Simple Orders provides data for executions and contra-side responses that
occurred within 200 microseconds of the time the resting order was received by the Exchange.
Meanwhile, the proposed Report would include the same data as the Liquidity Taker Event
Report for Simple Orders but would focus on executions and contra-side responses that occurred
after 200 microseconds of the time the resting order was received by the Exchange, and within
200 microseconds of receipt of any Member's first attempt to execute against the resting order
after the initial 200 microsecond time period has expired. More specifically, the resting order
must rest on the Simple Order Book for at least 200 microseconds and once that initial 200
microsecond period has passed, a Member must then submits an order to attempt to execute
against that resting order. This event starts a second 200 microsecond period within which the
proposed Report would include data on executions and contra-side responses submitted by the
Recipient Member to execute against that resting order.

For example, Member A submits an order that is posted to the Simple Order Book. 200
microseconds passes and Member A's order remains posted to the Simple Order Book. Then

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[20]   For purposes of calculating this duration of time, the Exchange will use the time the
         resting order and the Recipient Member's response(s) is received by the Exchange's
         network, both of which would be before the order and response(s) would be received by
         the System. This time difference would be provided in nanoseconds.

Member B enters a marketable order to execute against Member A's resting order, starting the second 200 microsecond window. Within this next 200 microsecond window, Member C sends a marketable order to execute against Member A's resting Order. Because Member B's order is received by the Exchange before Member C's order, Member B's order executes against Member A's resting order. The proposed Report would provide Member C the data points necessary for that firm to calculate by how much time they missed executing against Member A's resting order.

The above timeframe would be codified under proposed paragraph (c)(2) of Rule 531 which would provide that the proposed Report would include the data set forth under Rule 531(c)(1) described above for executions and contra-side responses that occurred (i) after 200 microseconds of the time the resting order was received by the Exchange and (ii) within 200 microseconds of receipt of the first attempt to execute against the resting order after the initial 200 microsecond time period under (c)(2)(i) of this paragraph has expired.

Scope of Data Included in the Report

Like current paragraph (a)(3) of Exchange Rule 531 for the existing Liquidity Taker Event Report for Simple Orders, proposed paragraph (c)(3) of Exchange Rule 531 would provide that the proposed Report will only include trading data related to the Recipient Member and, subject to the proposed paragraph (4) of Rule 531(c) described below, will not include any other Member's trading data other than that listed in paragraphs (1)(i) and (ii) of Exchange Rule 531(c) described above.

Historical Data

Like current paragraph (a)(4) of Exchange Rule 531 for the existing Liquidity Taker Event Report for Simple Orders, proposed paragraph (c)(4) of Rule 531 would specify that the proposed

Report will contain historical data from the prior trading day and will be available after the end of

the trading day, generally on a T+1 basis.

     b.   <u>Statutory Basis</u>

The Exchange believes the proposed rule change is consistent with the Act and the rules

and regulations thereunder applicable to the Exchange and, in particular, the requirements of

Section 6(b) of the Act.[21] Specifically, the Exchange believes the proposed rule change is

consistent with the Section 6(b)(5)[22] requirements that the rules of an exchange be designed to

prevent fraudulent and manipulative acts and practices, to promote just and equitable principles

of trade, to foster cooperation and coordination with persons engaged in regulating, clearing,

settling, processing information with respect to, and facilitating transactions in securities, to

remove impediments to and perfect the mechanism of a free and open market and a national

market system, and, in general, to protect investors and the public interest. This proposal is in

keeping with those principles in that it promotes increased transparency through the

dissemination of the optional Report to those interested in subscribing to receive the data.

Additionally, the Exchange believes the proposed rule change is consistent with the Section

6(b)(5)[23] requirement that the rules of an exchange not be designed to permit unfair

discrimination between customers, issuers, brokers, or dealers.

The timeframe covered by the proposed Report is the primary difference between it and

the existing Liquidity Taker Event Report for Simple Orders. However, this difference only

pertains to the timeframe covered by each report, with each report containing the exact same data

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[21]   15 U.S.C. 78f(b).

[22]   15 U.S.C. 78f(b)(5).

[23]   <u>Id</u>.

fields with one exception described here. The existing Liquidity Taker Event Report for Simple

Orders provides data for executions and contra-side responses that occurred within 200

microseconds of the time the resting order was received by the Exchange. Meanwhile, the

proposed Report would basically include the same data as the Liquidity Taker Event Report for

Simple Orders but would focus on executions and contra-side responses that occurred after 200

microseconds of the time the resting order was received by the Exchange and one additional

difference. The one difference is that unlike the existing Liquidity Taker Event Report for

Simple Orders, the proposed Report would not include the time difference between the time the

resting order and first response that executes against the resting order are received by the

Exchange. Each report focuses on 200 microsecond windows with the existing Report's window

starting at the time of receipt of the resting order and the proposed Report's window starting with

the first attempt to execute against the resting order after the order was resting on the Simple

Order Book for at least 200 microseconds.

The Exchange believes the proposed Report will serve to promote just and equitable

principles of trade, remove impediments to and perfect the mechanism of a free and open market

and a national market system, and, in general protect investors and the public interest because it

will benefit investors by facilitating their prompt access to the value added information that is

included in the proposed Report. The proposed Report will allow Members to access

information regarding their trading activity that they may utilize to evaluate their own trading

behavior and order interactions.

Like the existing Liquidity Taker Event Report for Simple Orders, the proposed Report is

designed for Members that are interested in gaining insight into latency in connection with orders

that failed to execute against an order resting on the Exchange's Simple Order Book by

providing those Members data to analyze by how much time their order may have missed an

execution against a contra-side order resting on the Book. The Exchange believes that providing

this optional latency data to interested Members is consistent with facilitating transactions in

securities, 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

because it provides greater visibility into the latency of Members' incoming orders. Members

may use this data to optimize their models and trading patterns in an effort to yield better

execution results by calculating by how much time their order may have missed an execution.

Like the existing Liquidity Taker Event Report for Simple Orders, the proposed Report is

designed to offer latency information in a systematized way and standardized format to any

Member that chooses to subscribe to the proposed Report. As a result, the proposal will make

latency information for liquidity-seeking orders available in an equalized manner and will

increase transparency, particularly for Recipient Members that may not have the expertise to

generate the same information on their own. The proposed Report may better enable Recipient

Members to increase the fill rates for their liquidity-seeking orders. At the same time, as is also

discussed above, the Report is designed to prevent a Recipient Member from learning other

Members' sensitive trading information. The Report would not be a real-time market data

product, as it would provide only historical trading data for the previous trading day, generally

on a T+1 basis. In addition, the data in the Report regarding incoming orders that failed to

execute would be specific to the Recipient Member's orders, and other information in the

proposed Report regarding resting orders and executions would be anonymized if it relates to a

Member other than the Recipient Member.

The proposed Report generally contains three buckets of information, each of which are

identical to the same buckets of information contained in the existing Liquidity Taker Event Report for Simple Orders, with one exception discussed herein and again below. The first two buckets include information about the resting order and the execution of the resting order. This information is generally available from other public sources, such as OPRA and the Exchange's proprietary data feeds, or is similar to information included in a report offered by another exchange. For example, OPRA provides bids, offers, and consolidated last sale and quotation information for options trading on all national securities exchanges, including the Exchange. In addition, the Exchange offers the Top of Market ("ToM") feed which provides real-time quote and last sale information for all displayed orders on the Book.[24]

Specifically, the first bucket of information contained in the Report for the resting order includes the time the resting order was received by the Exchange, the symbol, unique reference number assigned at the time of receipt, side (buy or sell), and the displayed price and size of the resting order. Further, the symbol, origin type, side (buy or sell), and displayed price and size are also available either via OPRA or the Exchange's proprietary data feeds. The first bucket of information also indicates whether the Recipient Member is an Affiliate of the Member that entered the resting order. This data field will not indicate the identity of the Member that entered the resting order and would simply allow the Recipient Member to better understand the scenarios in which it may execute against the orders of its Affiliates.[25]

The second bucket of information contained in the Report regards the execution of the resting order and includes the EBBO and ABBO at the time of execution. These data points are also available either via OPRA or the Exchange's proprietary data feeds. The second bucket of

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[24]   See Section 6)a) of the Exchange's fee schedule.

[25]   The Exchange's surveils to monitor for abhorrent behavior related to internalized trades and identify potential wash sales.

information will also indicate whether the response was entered by the Recipient Member. This

data point is simply provided as a convenience. If not entered by the Recipient Member, this

data point will be left blank so as not to include any identifying information about other Member

activity. The second bucket of information also includes the size, as well as the time and type of

first response that executes against the resting order. These data points would assist the

Recipient Member in analyzing by how much time their order may have missed an execution

against a contra-side order resting on the Book. Unlike the existing Liquidity Taker Event

Report for Simple Orders, the proposed Report would not include the time difference between

the time the resting order and first response that executes against the resting order are received

by the Exchange. The proposed Report would not include this data point because the Exchange

understands Recipient Members may not find it useful due to the fact that the proposed Report

focuses on orders that have been resting on the Simple Order Book for longer than 200

microseconds. Therefore, the Exchange does not propose to include this data point as a means to

streamline the proposed Report and remove unnecessary data.

The third bucket of information is about the Recipient Member's response(s) and the time

their response(s) is received by the Exchange. This includes the time difference between the

time the first response that executes against the resting order was received by the Exchange and

the time of each response sent by the Recipient Member, regardless of whether it executed or

not. As above, this data point would assist the Recipient Member in analyzing by how much

time their order may have missed an execution against a contra-side order resting on the Book.

This bucket would also include the size and type of each response submitted by the Recipient

Member, the Recipient Member identifier, and a response reference number which is selected by

the Recipient Member. Each of these data points are unique to the Recipient Member and should

already be known by Recipient Member even if not included in the Report.

Like the existing Liquidity Taker Event Report for Simple Orders, the Exchange

proposes to provide the Report on a voluntary basis and no Member will be required to subscribe

to the Report. The Exchange notes that there is no rule or regulation that requires the Exchange

to produce, or that a Member elect to receive, the Report. It is entirely a business decision of

each Member to subscribe to the Report. The Exchange proposes to offer the Report as a

convenience to Members to provide them with additional information regarding trading activity

on the Exchange on a delayed basis after the close of regular trading hours. A Member that

chooses to subscribe to the Report may discontinue receiving the Report at any time if that

Member determines that the information contained in the Report is no longer useful.

In summary, the proposed Report will help to protect a free and open market by

providing additional data (offered on an optional basis) to the marketplace and by providing

investors with greater choices.[26] Additionally, the proposal would not permit unfair

discrimination because the proposed Report will be available to all Exchange Members.

4.   Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on

competition that is not necessary or appropriate in furtherance of the purposes of the Act, as

amended. The Exchange believes that the proposed Report will enhance competition[27] by

providing a new option for receiving market data to Members. The proposed Report will also

further enhance competition between exchanges by allowing the Exchange to expand its product

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[26]   See Sec. Indus. Fin. Mkts. Ass'n (SIFMA), Initial Decision Release No. 1015, 2016 SEC
         LEXIS 2278 (ALJ June 1, 2016) (finding the existence of vigorous competition with
         respect to non-core market data).

[27]   Id.

offerings to include an additional report to provide latency information requested by Members.

In this instance, the proposed rule change to offer the optional Report is in response to Member interest and requests for such information, including from some Members that subscribe to the existing Liquidity Taker Event Report for Simple Orders. The Exchange does not believe the proposed Report will have an inappropriate burden on intra-market competition between Recipient Members and other Members who do not receive the Report. As discussed above, the first two buckets of information included in the Report contain information about the resting order and the execution of the resting order, both of which are generally available to Members that choose not to receive the Report from other public sources, such as OPRA and the Exchange's proprietary data feeds. The third bucket of information is about the Recipient Member's response and the time their response is received by the Exchange, information which the Recipient Member would be able to obtain without receiving the Report. Additionally, some Members may already be able to derive a substantial amount of the same data that is provided by some of the components based on their own executions and algorithms.

In sum, if the proposed Report is unattractive to Members, Members will opt not to receive it. Accordingly, the Exchange does not believe that the proposed change will impair the ability of Members or competing order execution venues to maintain their competitive standing in the financial markets.

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

No written comments were either solicited or received.

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 Act[28] and Rule 19b-4(f)(6)[29] 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

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. 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 Rule 19b-4(f)(6) under the Act[30] normally

does not become operative for 30 days after the date of its filing. Accordingly, the Exchange

believes that the proposed rule change is eligible for immediately effective treatment under the

Commission's current procedures for processing rule filings.

The Exchange believes that the proposed rule change meets the criteria of subparagraph

(f)(6) of Rule 19b-4[31] because the proposed rule change would not significantly affect investors

or the public interest because the proposed Report will make latency information for liquidity-

seeking orders available to Exchange Members in an equalized manner and will increase

transparency, particularly for Recipient Members that may not have the expertise to generate the

same information on their own. The proposed Report is also substantially similar to the existing

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28   15 U.S.C. 78s(b)(3)(A).

29   17 CFR 240.19b-4(f)(6).

30   Id.

31   Id.

Liquidity Taker Event Report for Simple Orders with the timeframe covered by each report

being the primary difference.[32] However, this difference only pertains to the timeframe covered

by each report, with each report containing the exact same data fields with one exception. That

one exception is that unlike the existing Liquidity Taker Event Report for Simple Orders, the

proposed Report would not include the time difference between the time the resting order and

first response that executes against the resting order are received by the Exchange. The proposed

Report would not include this data point because the Exchange understands Recipient Members

may not find it useful due to the fact that the proposed Report focuses on orders that have been

resting on the Simple Order Book for longer than 200 microseconds. Neither of these difference

reduce the fact that both reports are meant to serve the same purpose, i.e., provide latency

information regarding how much time by which they may have missed executing against resting

liquidity. Therefore, the proposed rule change does not present any new or novel issues not

previously considered by the Commission. Based on the foregoing, the Exchange has designated

this rule filing as noncontroversial under Section 19(b)(3)(A) of the Act[33] and paragraph (f)(6) of

Rule 19b-4 thereunder.[34]

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.

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[32]   See Exchange Rule 561(a). See also Securities Exchange Act Release No. 91787 (May 6, 2021), 86 FR 26111 (May 12, 2021) (SR-EMERALD-2021-09) (Order Approving Proposed Rule Change To Adopt Exchange Rule 531(a), Reports, To Provide for a New "Liquidity Taker Event Report").

[33]   15 U.S.C. 78s(b)(3)(A).

[34]   21 17 CFR 240.19b-4(f)(6).

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

Not applicable.

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.   Completed notice of proposed rule change for publication in the Federal Register.

5.   Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-   ; File No. SR-EMERALD-2023-02)

January__, 2023

Self-Regulatory Organizations: Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by MIAX Emerald, LLC to Amend Exchange Rule 531, Reports, Market Data Products and Services, to provide for the new "Liquidity Taker Event Report – Resting Simple Orders"

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 January____, 2023, MIAX Emerald, LLC ("MIAX Emerald" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I, 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 531 to provide for the new "Liquidity Taker Event Report – Resting Simple Orders".

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

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[1]   15 U.S.C. 78s(b)(1).

[2]   17 CFR 240.19b-4.

the proposed rule change. The text of these statements may be examined at the places specified

in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C

below, of the most significant aspects of such statements.

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

1.   Purpose

The Exchange proposes to amend Exchange Rule 531 to provide for the new "Liquidity

Taker Event Report – Resting Simple Orders" (the "Report"). The proposed Report will be an

optional product[3] available to Members.[4] Currently, the Exchange provides two types of

Liquidity Taker Event Reports, one including information about incoming orders seeking to

remove liquidity from the Simple Order Book[5] described under Exchange Rule 531(a), and a

second including the same information but about incoming Complex Orders that seek to remove

Complex Orders resting on the Strategy Book[6] described under Exchange Rule 531(b). Both of

these existing reports provide data for executions and contra-side responses that occurred within

200 microseconds of the time the resting order was received by the Exchange. But for the

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[3]   The Exchange intends to submit a separate filing with the Commission pursuant to
        Section 19(b)(1) to propose fees for the Liquidity Taker Event Report – Resting Simple
        Orders.

[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]   The term "Simple Order Book" means "the Exchange's regular electronic book of orders
        and quotes." See Exchange Rule 518(a)(15).

[6]   The term "Complex Strategy" means "a particular combination of components and their
        ratios to one another. New complex strategies can be created as the result of the receipt
        of a complex order or by the Exchange for a complex strategy that is not currently in the
        System." See Exchange Rule 518(a)(6). The term "Strategy Book" means the
        Exchange's electronic book of complex orders and complex quotes. See Exchange Rule
        518(a)(17). The Strategy Book is organized by Complex Strategy in that individual
        orders for a defined Complex Strategy are organized together in a book that is separate
        from the orders for a different Complex Strategy.

modified timeframe and one difference described below, the proposed Report would include the same data as the Liquidity Taker Event Report for Simple Orders but would focus on executions and contra-side responses that occurred after 200 microseconds of the time the resting order was received by the Exchange and within 200 microseconds of receipt of the first attempt to execute against the resting order after the initial 200 microsecond time period has expired as described further below.

Like for the existing reports, the Exchange believes the additional data points from the matching engine outlined below for the proposed Report may also help Members gain a better understanding about their interactions with the Exchange. The Exchange believes the proposed Report will provide Members with an opportunity to learn more about better opportunities to access liquidity and receive better execution rates. The proposed Report will increase transparency and democratize information so that all firms that subscribe to the Report have access to the same information on an equal basis, even for firms that do not have the appropriate resources to generate a similar report regarding interactions with the Exchange. Like the existing reports, none of the components of the proposed Report include real-time market data.

Members generally would use a liquidity accessing order if there is a high probability that it will execute against an order resting on the Simple Order Book. Like the existing reports, the proposed Report would identify by how much time an order that may have been marketable missed an execution but would focus on a later timeframe than the existing reports. The proposed Report will provide greater visibility into the missed trading execution, which will allow Members to optimize their models and trading patterns to yield better execution results.

Like the existing reports, the proposed Report will be a Member-specific report and will help Members to better understand by how much time a particular order missed executing against a specific resting order, thus allowing that Member to determine whether it wants to

invest in the necessary resources and technology to mitigate missed executions against certain

resting orders on the Simple Order Book. Like the existing reports, the Exchange proposes to

provide the Report on a T+1 basis. As further described below, the proposed Report will be

specific and tailored to the Member that is subscribed to the Report and any data included in the

Report that relates to a Member other than the Member receiving the Report will be anonymized.

The Exchange proposes to provide the proposed Report in response to additional Member

demand for data concerning the timeliness of their incoming orders and executions against

certain resting orders that have been resting on the Simple Order Book for at least 200

microseconds and within 200 microseconds of receipt of the first attempt to execute against the

resting order after the initial 200 microsecond time period has expired.. Certain Members that

subscribe to the existing reports have requested the same information as the Simple Order report

but for the later timeframe described herein so that they can better understand the timeliness of

their incoming orders and efficacy of their attempts to execute against resting liquidity on the

Exchange's Simple Order Book. The purpose of the proposed Report is to provide Members the

necessary data in a standardized format on a T+1 basis to those that subscribe to the Report on an

equal basis.

Proposed Exchange Rule 531(c) would provide that the Report is a daily report that

provides a Member ("Recipient Member") with its liquidity response time details for executions

of an order resting on the Book, where that Recipient Member attempted to execute against such

resting order within an extended timeframe that meets certain criteria described below.[7]

Report Content

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[7]   The Exchange proposes to renumber current Exchange Rule 531(c), Market Data
        Products, as Exchange Rule 531(d), and current Exchange Rule 531(d), High Precision
        Network Time Signal Service ("HPNTSS"), as Exchange Rule 531(e). The Exchange
        does not propose to amend the rule text of either rule.

The content of the proposed Report is basically identical to that of the existing Liquidity Taker Event Report for Simple Orders described under Exchange Rule 531(a) with two differences. The first difference is the timeframe of the proposed Report mentioned above and described in more detail below. The second difference is that, unlike the existing Liquidity Taker Event Report for Simple Orders, the proposed Report would not include the time difference between the time the resting order was received by the Exchange and the time the first response that executes against the resting order was received by the Exchange. Each of these differences are described below. All other aspects of the proposed Report are identical to the existing Liquidity Taker Event Report for Simple Orders described under Exchange Rule 531(a).

Like current paragraph (a)(1) of Exchange Rule 531 for the existing Liquidity Taker Event Report for Simple Orders, proposed paragraph (c)(1) of Rule 531 would describe the content of the proposed Report and delineate which information would be provided regarding the resting order,[8] the response that successfully executed against the resting order, and the response submitted by the Recipient Member that missed executing against the resting order. It is important to note that the content of the Report will be specific to the Recipient Member and the Report will not include any information related to any Member other than the Recipient Member, other than certain information about the resting order described below. The Exchange will restrict all other market participants, including the Recipient Member, from receiving another market participant's data.

Resting Order Information. Like current paragraph (a)(1)(i) of Exchange Rule 531 for the existing Liquidity Taker Event Report for Simple Orders, proposed Exchange Rule 531(c)(1)(i) would provide that the following information would be included in the Report

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[8]   Only displayed orders will be included in the Report. The Exchange notes that it does not currently offer any non-displayed orders types on its options trading platform.

regarding the resting order: (A) the time the resting order was received by the Exchange;[9] (B)

symbol; (C) order reference number, which is a unique reference number assigned to a new order

at the time of receipt; (D) whether the Recipient Member is an Affiliate[10] of the Member that

entered the resting order[11]; (E) origin type (u.g., Priority Customer,[12] Market Maker[13]); (F) side

(buy or sell); and (G) displayed price and size of the resting order.[14]

  Execution Information. Like current paragraph (a)(1)(ii) of Exchange Rule 531 for the

existing Liquidity Taker Event Report for Simple Orders, proposed Exchange Rule 531(c)(1)(ii)

would provide that the following information would be included in the Report regarding the

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[9] The time the Exchange received the resting order would be in nanoseconds and is the time the resting order was received by the Exchange's System.

[10] The term "affiliate" of or person "affiliated with" another person means a person who, directly, or indirectly, controls, is controlled by, or is under common control with, such other person. See Exchange Rule 100.

[11] The Report will simply indicate whether the Recipient Member is an Affiliate of the Member that entered the resting order and not include any other information that may indicate the identity of the Member that entered the resting order.

[12] The term "Priority Customer" means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). The number of orders shall be counted in accordance with Interpretation and Policy .01 to Exchange Rule 100. See Exchange Rule 100.

[13] The term "Market Maker" refers to "Lead Market Makers", "Primary Lead Market Makers" and "Registered Market Makers" collectively. See Exchange Rule 100.

[14] The Exchange notes that the displayed price and size are also disseminated via the Exchange's proprietary data feeds and the Options Price Reporting Authority ("OPRA"). The Exchange also notes that the displayed price of the resting order may be different than the ultimate execution price. This may occur when a resting order is displayed and ranked at different prices upon entry to avoid a locked or crossed market.

execution of the resting order: (A) the EBBO[15] at the time of execution;[16] (B) the ABBO[17] at the

time of execution;[18] (C) the time first response that executes against the resting order was

received by the Exchange and the size of the execution and type of the response;[19] and (D)

whether the response was entered by the Recipient Member. If the resting order executes against

multiple contra-side responses, only the EBBO and ABBO at the time of the execution against

the first response will be included.

Exchange Rule 531(a)(1)(ii)(D) provides that the existing Liquidity Taker Event Report

for Simple Orders also includes the time difference between the time the resting order was

received by the Exchange and the time the first response that executes against the resting order

was received by the Exchange. The proposed Report would not include the same information

because that timeframe could be for an extended period of time since the proposed Report

focuses on orders that have been resting on the Simple Order Book for longer than 200

microseconds and, therefore, the Exchange believes is less likely to be valuable to the Recipient

Member.

Recipient Member's Response Information. Like current paragraph (a)(1)(iii) of

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

[16]   Exchange Rule 531(c)(1)(ii)(A) would further provide that if the resting order executes
        against multiple contra-side responses, only the EBBO at the time of the execution
        against the first response will be included.

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

[18]   Exchange Rule 531(c)(1)(ii)(B) would further provide that if the resting order executes
        against multiple contra-side responses, only the ABBO at the time of the execution
        against the first response will be included.

[19]   The time the Exchange received the response order would be in nanoseconds and would
        be the time the response was received by the Exchange's network, which is before the
        time the response would be received by the System.

Exchange Rule 531 for the existing Liquidity Taker Event Report for Simple Orders, proposed

Rule 531(c)(1)(iii) would provide that the following information would be included in the Report

regarding response(s) sent by the Recipient Member: (A) Recipient Member identifier; (B) the

time difference between the time the first response that executes against the resting order was

received by the Exchange and the time of each response sent by the Recipient Member,

regardless of whether it executed or not;[20] (C) size and type of each response submitted by

Recipient Member; and (D) response reference number, which is a unique reference number

attached to the response by the Recipient Member.

<u>Timeframe for Data Included in Report</u>

The timeframe covered by the proposed Report is the primary difference between it and

the existing Liquidity Taker Event Report for Simple Orders. The existing Liquidity Taker

Event Report for Simple Orders provides data for executions and contra-side responses that

occurred within 200 microseconds of the time the resting order was received by the Exchange.

Meanwhile, the proposed Report would include the same data as the Liquidity Taker Event

Report for Simple Orders but would focus on executions and contra-side responses that occurred

after 200 microseconds of the time the resting order was received by the Exchange, and within

200 microseconds of receipt of any Member's first attempt to execute against the resting order

after the initial 200 microsecond time period has expired. More specifically, the resting order

must rest on the Simple Order Book for at least 200 microseconds and once that initial 200

microsecond period has passed, a Member must then submits an order to attempt to execute

against that resting order. This event starts a second 200 microsecond period within which the

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[20]   For purposes of calculating this duration of time, the Exchange will use the time the
         resting order and the Recipient Member's response(s) is received by the Exchange's
         network, both of which would be before the order and response(s) would be received by
         the System. This time difference would be provided in nanoseconds.

proposed Report would include data on executions and contra-side responses submitted by the Recipient Member to execute against that resting order.

For example, Member A submits an order that is posted to the Simple Order Book. 200 microseconds passes and Member A's order remains posted to the Simple Order Book. Then Member B enters a marketable order to execute against Member A's resting order, starting the second 200 microsecond window. Within this next 200 microsecond window, Member C sends a marketable order to execute against Member A's resting Order. Because Member B's order is received by the Exchange before Member C's order, Member B's order executes against Member A's resting order. The proposed Report would provide Member C the data points necessary for that firm to calculate by how much time they missed executing against Member A's resting order.

The above timeframe would be codified under proposed paragraph (c)(2) of Rule 531 which would provide that the proposed Report would include the data set forth under Rule 531(c)(1) described above for executions and contra-side responses that occurred (i) after 200 microseconds of the time the resting order was received by the Exchange and (ii) within 200 microseconds of receipt of the first attempt to execute against the resting order after the initial 200 microsecond time period under (c)(2)(i) of this paragraph has expired.

Scope of Data Included in the Report

Like current paragraph (a)(3) of Exchange Rule 531 for the existing Liquidity Taker Event Report for Simple Orders, proposed paragraph (c)(3) of Exchange Rule 531 would provide that the proposed Report will only include trading data related to the Recipient Member and, subject to the proposed paragraph (4) of Rule 531(c) described below, will not include any other Member's trading data other than that listed in paragraphs (1)(i) and (ii) of Exchange Rule 531(c) described above.

Historical Data

Like current paragraph (a)(4) of Exchange Rule 531 for the existing Liquidity Taker Event Report for Simple Orders, proposed paragraph (c)(4) of Rule 531 would specify that the proposed Report will contain historical data from the prior trading day and will be available after the end of the trading day, generally on a T+1 basis.

2.   Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[21] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[22] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. This proposal is in keeping with those principles in that it promotes increased transparency through the dissemination of the optional Report to those interested in subscribing to receive the data. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[23] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The timeframe covered by the proposed Report is the primary difference between it and

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[21]   15 U.S.C. 78f(b).

[22]   15 U.S.C. 78f(b)(5).

[23]   Id.

the existing Liquidity Taker Event Report for Simple Orders. However, this difference only

pertains to the timeframe covered by each report, with each report containing the exact same data

fields with one exception described here. The existing Liquidity Taker Event Report for Simple

Orders provides data for executions and contra-side responses that occurred within 200

microseconds of the time the resting order was received by the Exchange. Meanwhile, the

proposed Report would basically include the same data as the Liquidity Taker Event Report for

Simple Orders but would focus on executions and contra-side responses that occurred after 200

microseconds of the time the resting order was received by the Exchange and one additional

difference. The one difference is that unlike the existing Liquidity Taker Event Report for

Simple Orders, the proposed Report would not include the time difference between the time the

resting order and first response that executes against the resting order are received by the

Exchange. Each report focuses on 200 microsecond windows with the existing Report's window

starting at the time of receipt of the resting order and the proposed Report's window starting with

the first attempt to execute against the resting order after the order was resting on the Simple

Order Book for at least 200 microseconds.

The Exchange believes the proposed Report will serve to promote just and equitable

principles of trade, remove impediments to and perfect the mechanism of a free and open market

and a national market system, and, in general protect investors and the public interest because it

will benefit investors by facilitating their prompt access to the value added information that is

included in the proposed Report. The proposed Report will allow Members to access

information regarding their trading activity that they may utilize to evaluate their own trading

behavior and order interactions.

Like the existing Liquidity Taker Event Report for Simple Orders, the proposed Report is

designed for Members that are interested in gaining insight into latency in connection with orders

that failed to execute against an order resting on the Exchange's Simple Order Book by providing those Members data to analyze by how much time their order may have missed an execution against a contra-side order resting on the Book. The Exchange believes that providing this optional latency data to interested Members is consistent with facilitating transactions in securities, 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 because it provides greater visibility into the latency of Members' incoming orders. Members may use this data to optimize their models and trading patterns in an effort to yield better execution results by calculating by how much time their order may have missed an execution.

Like the existing Liquidity Taker Event Report for Simple Orders, the proposed Report is designed to offer latency information in a systematized way and standardized format to any Member that chooses to subscribe to the proposed Report. As a result, the proposal will make latency information for liquidity-seeking orders available in an equalized manner and will increase transparency, particularly for Recipient Members that may not have the expertise to generate the same information on their own. The proposed Report may better enable Recipient Members to increase the fill rates for their liquidity-seeking orders. At the same time, as is also discussed above, the Report is designed to prevent a Recipient Member from learning other Members' sensitive trading information. The Report would not be a real-time market data product, as it would provide only historical trading data for the previous trading day, generally on a T+1 basis. In addition, the data in the Report regarding incoming orders that failed to execute would be specific to the Recipient Member's orders, and other information in the proposed Report regarding resting orders and executions would be anonymized if it relates to a Member other than the Recipient Member.

The proposed Report generally contains three buckets of information, each of which are

identical to the same buckets of information contained in the existing Liquidity Taker Event Report for Simple Orders, with one exception discussed herein and again below. The first two buckets include information about the resting order and the execution of the resting order. This information is generally available from other public sources, such as OPRA and the Exchange's proprietary data feeds, or is similar to information included in a report offered by another exchange. For example, OPRA provides bids, offers, and consolidated last sale and quotation information for options trading on all national securities exchanges, including the Exchange. In addition, the Exchange offers the Top of Market ("ToM") feed which provides real-time quote and last sale information for all displayed orders on the Book.[24]

Specifically, the first bucket of information contained in the Report for the resting order includes the time the resting order was received by the Exchange, the symbol, unique reference number assigned at the time of receipt, side (buy or sell), and the displayed price and size of the resting order. Further, the symbol, origin type, side (buy or sell), and displayed price and size are also available either via OPRA or the Exchange's proprietary data feeds. The first bucket of information also indicates whether the Recipient Member is an Affiliate of the Member that entered the resting order. This data field will not indicate the identity of the Member that entered the resting order and would simply allow the Recipient Member to better understand the scenarios in which it may execute against the orders of its Affiliates.[25]

The second bucket of information contained in the Report regards the execution of the resting order and includes the EBBO and ABBO at the time of execution. These data points are also available either via OPRA or the Exchange's proprietary data feeds. The second bucket of

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[24]   See Section 6)a) of the Exchange's fee schedule.

[25]   The Exchange's surveils to monitor for abhorrent behavior related to internalized trades and identify potential wash sales.

information will also indicate whether the response was entered by the Recipient Member. This data point is simply provided as a convenience. If not entered by the Recipient Member, this data point will be left blank so as not to include any identifying information about other Member activity. The second bucket of information also includes the size, as well as the time and type of first response that executes against the resting order. These data points would assist the Recipient Member in analyzing by how much time their order may have missed an execution against a contra-side order resting on the Book. Unlike the existing Liquidity Taker Event Report for Simple Orders, the proposed Report would not include the time difference between the time the resting order and first response that executes against the resting order are received by the Exchange. The proposed Report would not include this data point because the Exchange understands Recipient Members may not find it useful due to the fact that the proposed Report focuses on orders that have been resting on the Simple Order Book for longer than 200 microseconds. Therefore, the Exchange does not propose to include this data point as a means to streamline the proposed Report and remove unnecessary data.

The third bucket of information is about the Recipient Member's response(s) and the time their response(s) is received by the Exchange. This includes the time difference between the time the first response that executes against the resting order was received by the Exchange and the time of each response sent by the Recipient Member, regardless of whether it executed or not. As above, this data point would assist the Recipient Member in analyzing by how much time their order may have missed an execution against a contra-side order resting on the Book. This bucket would also include the size and type of each response submitted by the Recipient Member, the Recipient Member identifier, and a response reference number which is selected by the Recipient Member. Each of these data points are unique to the Recipient Member and should already be known by Recipient Member even if not included in the Report.

Like the existing Liquidity Taker Event Report for Simple Orders, the Exchange

proposes to provide the Report on a voluntary basis and no Member will be required to subscribe

to the Report. The Exchange notes that there is no rule or regulation that requires the Exchange

to produce, or that a Member elect to receive, the Report. It is entirely a business decision of

each Member to subscribe to the Report. The Exchange proposes to offer the Report as a

convenience to Members to provide them with additional information regarding trading activity

on the Exchange on a delayed basis after the close of regular trading hours. A Member that

chooses to subscribe to the Report may discontinue receiving the Report at any time if that

Member determines that the information contained in the Report is no longer useful.

In summary, the proposed Report will help to protect a free and open market by

providing additional data (offered on an optional basis) to the marketplace and by providing

investors with greater choices.[26] Additionally, the proposal would not permit unfair

discrimination because the proposed Report will be available to all Exchange Members.

B.   Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on

competition that is not necessary or appropriate in furtherance of the purposes of the Act, as

amended. The Exchange believes that the proposed Report will enhance competition[27] by

providing a new option for receiving market data to Members. The proposed Report will also

further enhance competition between exchanges by allowing the Exchange to expand its product

offerings to include an additional report to provide latency information requested by Members.

In this instance, the proposed rule change to offer the optional Report is in response to

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[26]   See Sec. Indus. Fin. Mkts. Ass'n (SIFMA), Initial Decision Release No. 1015, 2016 SEC
         LEXIS 2278 (ALJ June 1, 2016) (finding the existence of vigorous competition with
         respect to non-core market data).

[27]   Id.

Member interest and requests for such information, including from some Members that subscribe

to the existing Liquidity Taker Event Report for Simple Orders. The Exchange does not believe

the proposed Report will have an inappropriate burden on intra-market competition between

Recipient Members and other Members who do not receive the Report. As discussed above, the

first two buckets of information included in the Report contain information about the resting

order and the execution of the resting order, both of which are generally available to Members

that choose not to receive the Report from other public sources, such as OPRA and the

Exchange's proprietary data feeds. The third bucket of information is about the Recipient

Member's response and the time their response is received by the Exchange, information which

the Recipient Member would be able to obtain without receiving the Report. Additionally, some

Members may already be able to derive a substantial amount of the same data that is provided by

some of the components based on their own executions and algorithms.

In sum, if the proposed Report is unattractive to Members, Members will opt not to

receive it. Accordingly, the Exchange does not believe that the proposed change will impair the

ability of Members or competing order execution venues to maintain their competitive standing

in the financial markets.

     C.   <u>Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others</u>

Written comments were neither solicited nor received.

III.   <u>Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action</u>

Because the foregoing proposed rule change does not: (i) Significantly affect the

protection of investors or the public interest; (ii) impose any significant burden on competition;

and (iii) become operative for 30 days after the date of the filing, or such shorter time as the

Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act[28] and

Rule 19b-4(f)(6)[29] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission

summarily may temporarily suspend such rule change if it appears to the Commission that such

action is necessary or appropriate in the public interest, for the protection of investors, or

otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the

Commission shall institute proceedings to determine whether the proposed rule should be

approved or disapproved.

IV.   Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning

the foregoing, including whether the proposed rule change is consistent with the Act.

Comments may be submitted by any of the following methods:

Electronic comments:

☐ Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml);

or

☐ Send an e-mail to rule-comments@sec.gov. Please include File Number SR-

EMERALD-2023-02 on the subject line.

Paper comments:

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[28]   15 U.S.C. 78s(b)(3)(A).

[29]   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.

☐   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-2023-02. 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-2023-02 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.[30]

Vanessa Countryman
Secretary

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[30]   17 CFR 200.30-3(a)(12).

EXHIBIT 5

New text is <u>underlined</u>;
Deleted text is in [brackets]

MIAX Emerald Options Exchange Rules

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Rule 531. Reports, Market Data Products and Services

(a) – (b) (No change).

(c) <u>Liquidity Taker Event Report – Resting Simple Orders</u>. <u>The Liquidity Taker Event Report- Resting Simple Orders is a daily report that provides a Member ("Recipient Member") with its liquidity response time details for executions against an order resting on the Simple Order Book, where that Recipient Member attempted to execute against such resting order within the timeframe specified under paragraph (2) below.</u>

<u>(1) **Content**. The Liquidity Taker Event Report- Resting Simple Orders will include the following information:</u>

<u>(i) **Resting Order**.</u>

<u>(A) The time a resting order was received by the Exchange.</u>

<u>(B) Symbol.</u>

<u>(C) Order reference number (unique reference number assigned to a new order at the time of receipt).</u>

<u>(D) Whether the Recipient Member is an Affiliate of the Member that entered the resting order.</u>

<u>(E) Origin type (e.g., Priority Customer, Market Maker).</u>

<u>(F) Side (buy or sell).</u>

<u>(G) Displayed price and size of the resting order.</u>

<u>(ii) **Execution of the Resting Order**.</u>

<u>(A) EBBO at the time of the execution. If the resting order executes against multiple contra-side responses, only the EBBO at the time of the execution against the first response will be included.</u>

<u>(B) ABBO at the time of the execution. If the resting order executes against multiple contra-side responses, only the ABBO at the time of the execution against the first response will be included.</u>

(C) Time first response that executes against the resting order was received by the Exchange and the size of the execution and type of the response.

(D) Whether response was entered by the Recipient Member.

(iii) **Response(s) Sent by Recipient Member**.

(A) Recipient Member identifier.

(B) Time difference between the time the first response that executes against the resting order was received by the Exchange and the time of each response sent by the Recipient Member, regardless of whether it executed or not.

(C) Size and type of each response submitted by the Recipient Member.

(D) Response reference number (unique reference number attached to response by the Recipient Member).

(2) **Timeframe**. The Liquidity Taker Event Report-Resting Simple Orders will include data listed in paragraph (c)(1) of this Rule 531(c) for executions and contra-side responses that occurred (i) after 200 microseconds of the time the resting order was received by the Exchange and (ii) within 200 microseconds of receipt of any Member's first attempt to execute against the resting order after the initial 200 microsecond time period under (c)(2)(i) of this paragraph has expired.

(3) **Data Scope**. The Liquidity Taker Event Report-Resting Simple Orders will only include trading data related to the Recipient Member and will not include any other Member's trading data other than that listed in paragraphs (1)(i) and (ii) of this Rule 531(c).

(4) **Historical Data**. The Liquidity Taker Event Report-Resting Simple Orders contains historical data from the previous trading day and will be available after the end of the trading day, generally on a T+1 basis.

([c]d) **Market Data Products**

(1) (No change).

([d]e) **High Precision Network Time Signal Service ("HPNTSS").** (No change).

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