

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 20	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No. * SR 2021 - * 40 Amendment No. (req. for Amendments *)
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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) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934 Section 3C(b)(2) * <input type="checkbox"/>
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Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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**Description**  
Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

**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 *	<input type="text" value="Greg"/>	Last Name *	<input type="text" value="Ziegler"/>
Title *	<input type="text" value="Senior Counsel"/>		
E-mail *	<input type="text" value="gziegler@miaxoptions.com"/>		
Telephone *	<input type="text" value="(609) 897-1483"/>	Fax	<input type="text"/>

**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	<input type="text" value="11/05/2021"/>	(Title *)	
By	<input type="text" value="Gregory P. Ziegler"/> (Name *)	<input type="text" value="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: 2021.11.05  
11:32:55 -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 EFFF website.

**Form 19b-4 Information \***

Add	Remove	View
SR-EMERALD-2021-40 19b-4 Fee.doc		

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-2021-40 Exhibit 1.doc		

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-2021-40 Exhibit 5 Fee.		

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”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> proposes to amend the MIAX Emerald Fee Schedule (the “Fee Schedule”) to establish a policy relating to billing errors.

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1, and a copy of the applicable section of the Fee Schedule 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 his designee pursuant to authority delegated by the MIAX Emerald Board of Directors on January 28, 2021. 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 changes.

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

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

a. Purpose

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

The purpose of the proposed rule change is to amend MIAX Emerald's Fee Schedule to establish a policy relating to billing errors. More specifically, the Exchange proposes to amend the footer on the Title page of its Fee Schedule to adopt language that would provide that all fees and rebates assessed prior to the three full calendar months before the month in which the Exchange becomes aware of a billing error shall be considered final. Particularly, the Exchange will resolve an error by crediting or debiting Members<sup>3</sup> and non-Members based on the fees or rebates that should have been applied in the three full calendar months preceding the month in which the Exchange became aware of the error, which includes all impacted transactions that occurred during those months.<sup>4</sup> The Exchange will apply the three month look back regardless of whether the error was discovered by the Exchange or by a Member or non-Member that submitted a fee dispute to the Exchange.<sup>5</sup>

The purpose of the proposed change is to encourage Members and non-Members to promptly review their Exchange invoices so that any disputed charges can be addressed in a timely manner. The Exchange notes that it provides Members with both daily and monthly fee reports and thus believes they should be aware of any potential billing errors within three

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<sup>3</sup> 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.

<sup>4</sup> For example, if the Exchange becomes aware of a transaction fee billing error on December 1, 2021, the Exchange will resolve the error by crediting or debiting Members and non-Members based on the fees or rebates that should have been applied to any impacted transactions during September, October and November 2021. The Exchange notes that because it bills in arrears, the Exchange would be able to correct the error in advance of issuing the December 2021 invoice and therefore, transactions impacted through the date of discovery (in this example, December 1, 2021) and thereafter, would be billed correctly.

<sup>5</sup> The Exchange notes that the current policy which states that all fee disputes must be submitted no later than sixty (60) days after receipt of a billing invoice will remain in place.

months. Further, any fees assessed on non-Members are sent as monthly invoices, and thus these firms will likewise receive sufficient notice of any potential billing errors. The requirement that Members and non-Members submit disputes in writing and provide supporting documentation in a timely manner while the information and data underlying those charges (e.g., applicable fees and order information) is still easily and readily available is not changing under this proposal.

The proposed rule change to provide all fees and rebates assessed prior to the three full calendar months before the month in which the Exchange becomes aware of a billing error shall be considered final provides both the Exchange and Members and non-Members finality and the ability to close their books after a known period of time. The proposed change encourages Members and non-Members to provide a timely review of their billing invoices.

The Exchange notes that it routinely conducts audits of its Members and non-Members to ensure that each is complying with the terms and conditions of the subscriber agreement they have signed. The audit process is independent of the billing process. The audit function is administered by the Exchange's Member Services Group and the billing function is administered by the Exchange's Trading Operations Group. Each group is charged with distinct responsibilities that do not overlap. The proposed billing fee finality provision is not intended to circumvent the audit process in any manner and the adoption of the three month look back period, beyond which billing errors would be considered final, would not affect a Member or non-Member's ability to take a position with respect to billing charges identified through the audit process.

Further, the Exchange notes that the proposed change is similar to a policy currently in place at another exchange.<sup>6</sup>

b. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act.<sup>7</sup> Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(5)<sup>8</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>9</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that establishing a policy that all fees and rebates are final after three months (i.e., resolving billing errors only for the three full calendar months preceding the month in which the Exchange became aware of the error), is reasonable as both the Exchange and Members and non-Members have an interest in knowing when its fee assessments are final and when reliance can be placed upon those assessments. Indeed, without some deadline on

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<sup>6</sup> See Securities Exchange Act Release No. 91836 (May 11, 2021), 86 FR 26765 (May 17, 2021) (SR-BOX-2021-08).

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> Id.

billing errors, the Exchange and Members and non-Members would never be able to close their books with any confidence. Furthermore, as noted above, another exchange similarly considers its fees final after a similar period of time. The proposed change is also equitable, and not unfairly discriminatory because it will apply equally to all Members (and non-Members that pay Exchange fees) and apply in cases where either the Member (or non-Member) discovers the error or the Exchange discovers the error.

**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 not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change would establish a policy that provides clarity regarding billing errors that would apply equally to all Members. Additionally, the proposed rule change is similar to the rules of another exchange.<sup>10</sup> The Exchange does not believe such proposed changes would impair the ability of Members or competing order execution venues to maintain their competitive standing in the financial markets. Moreover, because the proposed changes would apply equally to all Members, the proposal does not impose any burden on competition.

**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)**

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<sup>10</sup> Supra note 6.

Pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> and Rule 19b-4(f)(6)<sup>12</sup> 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.

First, the Exchange notes it does not believe that its proposal raises any new or novel issues that have not been previously considered by the Commission in connection with billing policies of another exchange, as it's comparable to other policies and practices at another exchange.<sup>13</sup> The Exchange believes that the proposed rule change will not significantly affect the protection of investors or the public interest because it aligns with practices that are already in place at another exchange and enables market participants to close their books with confidence.

The proposed rule change will also benefit investors and the public interest by creating a clear policy regarding the finality of billing errors. The Exchange also believes that the proposed rule change will not impose any significant burden on competition. The proposed change would establish a clear policy regarding the finality of billing errors, which is substantially similar to the rules of at least one other exchange.<sup>14</sup> Moreover, because the proposed change would not apply differently to distinct types or sizes of market participants, the Exchange does not believe

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

<sup>13</sup> Supra note 6.

<sup>14</sup> Id.

such proposed changes will impair the ability of Members or competing order execution venues to maintain their competitive standing in the financial markets.

For the foregoing reason, this rule qualifies for immediate effectiveness as a “non-controversial” rule change under Section 19(b)(3)(A) of the Act<sup>15</sup> and paragraph (f)(6) of Rule 19b-4 thereunder.<sup>16</sup>

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<sup>17</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)<sup>18</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.

The Exchange respectfully requests that the Commission waive the 30-day operative delay period for “non-controversial” proposals pursuant to Section 19(b)(3)(A) of the Act<sup>19</sup> and paragraph (f)(6) of Rule 19b-4 thereunder<sup>20</sup> and make the proposed rule change effective and operative upon filing. Waiver of this requirement, specified in Rule 19b-4(f)(6),<sup>21</sup> is consistent with the protection of investors and the public interest because waiver of the operative delay

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<sup>15</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>16</sup> 17 CFR 240.19b-4(f)(6).

<sup>17</sup> 17 CFR 240.19b-4(f)(6).

<sup>18</sup> 17 CFR 240.19b-4(f)(6).

<sup>19</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>20</sup> 17 CFR 240.19b-4(f)(6).

<sup>21</sup> 17 CFR 240.19b-4(f)(6).

would allow Members and non-Members to immediately benefit from having a clearly stated policy regarding fee finality for billing disputes and provide certainty and finality to current and prospective billing errors. Moreover, as noted above, the proposal does not raise any new or novel issues that have not already been considered by the Commission. Particularly, the proposed rule change is comparable to other policies and practices that are already established at another exchange.<sup>22</sup>

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.

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

The proposed rule change is based on the rules of Box Options.<sup>23</sup>

**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.

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<sup>22</sup> Supra note 6.

<sup>23</sup> Supra note 6.

**11. Exhibits**

1. Notice of proposed rule for publication in the Federal Register.
5. Applicable section of the Fee Schedule.

**EXHIBIT 1**SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. SR-EMERALD-2021-40)

November \_\_, 2021

Self-Regulatory Organizations: Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by MIAX Emerald, LLC to Amend the MIAX Emerald Fee Schedule to Establish a Policy Relating to Billing Errors

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 5, 2021, MIAX Emerald, LLC (“MIAX Emerald” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the MIAX Emerald Fee Schedule (the “Fee Schedule”) to establish a policy relating to billing errors.

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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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 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 purpose of the proposed rule change is to amend MIAX Emerald's Fee Schedule to establish a policy relating to billing errors. More specifically, the Exchange proposes to amend the footer on the Title page of its Fee Schedule to adopt language that would provide that all fees and rebates assessed prior to the three full calendar months before the month in which the Exchange becomes aware of a billing error shall be considered final. Particularly, the Exchange will resolve an error by crediting or debiting Members<sup>3</sup> and non-Members based on the fees or rebates that should have been applied in the three full calendar months preceding the month in which the Exchange became aware of the error, which includes all impacted transactions that occurred during those months.<sup>4</sup> The Exchange will apply the three month look back regardless

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<sup>3</sup> 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.

<sup>4</sup> For example, if the Exchange becomes aware of a transaction fee billing error on December 1, 2021, the Exchange will resolve the error by crediting or debiting Members and non-Members based on the fees or rebates that should have been applied to any impacted transactions during September, October and November 2021. The Exchange notes that because it bills in arrears, the Exchange would be able to correct the error in advance of issuing the December 2021 invoice and therefore, transactions impacted through the date of discovery (in this example, December 1, 2021) and thereafter, would be billed correctly.

of whether the error was discovered by the Exchange or by a Member or non-Member that submitted a fee dispute to the Exchange.<sup>5</sup>

The purpose of the proposed change is to encourage Members and non-Members to promptly review their Exchange invoices so that any disputed charges can be addressed in a timely manner. The Exchange notes that it provides Members with both daily and monthly fee reports and thus believes they should be aware of any potential billing errors within three months. Further, any fees assessed on non-Members are sent as monthly invoices, and thus these firms will likewise receive sufficient notice of any potential billing errors. The requirement that Members and non-Members submit disputes in writing and provide supporting documentation in a timely manner while the information and data underlying those charges (e.g., applicable fees and order information) is still easily and readily available is not changing under this proposal.

The proposed rule change to provide all fees and rebates assessed prior to the three full calendar months before the month in which the Exchange becomes aware of a billing error shall be considered final provides both the Exchange and Members and non-Members finality and the ability to close their books after a known period of time. The proposed change encourages Members and non-Members to provide a timely review of their billing invoices.

The Exchange notes that it routinely conducts audits of its Members and non-Members to ensure that each is complying with the terms and conditions of the subscriber agreement they have signed. The audit process is independent of the billing process. The audit function is administered by the Exchange's Member Services Group and the billing function is administered by the Exchange's Trading Operations Group. Each group is charged with distinct

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<sup>5</sup> The Exchange notes that the current policy which states that all fee disputes must be submitted no later than sixty (60) days after receipt of a billing invoice will remain in place.

responsibilities that do not overlap. The proposed billing fee finality provision is not intended to circumvent the audit process in any manner and the adoption of the three month look back period, beyond which billing errors would be considered final, would not affect a Member or non-Member's ability to take a position with respect to billing charges identified through the audit process.

Further, the Exchange notes that the proposed change is similar to a policy currently in place at another exchange.<sup>6</sup>

## 2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act.<sup>7</sup> Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(5)<sup>8</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>9</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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<sup>6</sup> See Securities Exchange Act Release No. 91836 (May 11, 2021), 86 FR 26765 (May 17, 2021) (SR-BOX-2021-08).

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> Id.

The Exchange believes that establishing a policy that all fees and rebates are final after three months (i.e., resolving billing errors only for the three full calendar months preceding the month in which the Exchange became aware of the error), is reasonable as both the Exchange and Members and non-Members have an interest in knowing when its fee assessments are final and when reliance can be placed upon those assessments. Indeed, without some deadline on billing errors, the Exchange and Members and non-Members would never be able to close their books with any confidence. Furthermore, as noted above, another exchange similarly considers its fees final after a similar period of time. The proposed change is also equitable, and not unfairly discriminatory because it will apply equally to all Members (and non-Members that pay Exchange fees) and apply in cases where either the Member (or non-Member) discovers the error or the Exchange discovers the error.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change would establish a policy that provides clarity regarding billing errors that would apply equally to all Members. Additionally, the proposed rule change is similar to the rules of another exchange.<sup>10</sup> The Exchange does not believe such proposed changes would impair the ability of Members or competing order execution venues to maintain their competitive standing in the financial markets. Moreover, because the proposed changes would apply equally to all Members, the proposal does not impose any burden on competition.

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.

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<sup>10</sup> Supra note 6.

### 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 Act<sup>11</sup> and Rule 19b-4(f)(6)<sup>12</sup> 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

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 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 an e-mail [to rule-comments@sec.gov](mailto:to_rule-comments@sec.gov). Please include File Number SR-EMERALD-2021-40 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-2021-40. 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-2021-40 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.<sup>13</sup>

Vanessa Countryman  
Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).

**Exhibit 5**

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

MIAX Emerald Options Exchange  
Fee Schedule

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All Exchange invoices are due in full on a timely basis and payable in accordance with MIAX Emerald Rule 208. All disputes related to fees, dues or other charges must be submitted to the Exchange in writing no later than sixty (60) days after the date of the monthly invoice and must be accompanied by supporting documentation.

All fees and rebates assessed prior to the three full calendar months before the month in which the Exchange becomes aware of a billing error shall be considered final.

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