

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-93593; File No. SR-EMERALD-2021-40)

November 16, 2021

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

Pursuant to 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 November 5, 2021, MIAX Emerald, LLC (“MIAX Emerald” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I and II 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 the proposed rule change. The text of these statements may be examined at the places specified

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The 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 Members³ 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.⁴ The Exchange will apply the three month look back regardless

³ 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.

⁴ 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.⁵

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

⁵ 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.⁶

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act.⁷ Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(5)⁸ 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)⁹ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁹ 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.¹⁰ 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.

¹⁰ Supra note 6.

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

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6)¹² thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)¹³ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)¹⁴ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay. The Exchange states that waiver of the operative delay is consistent with the protection of investors and the public interest because such a waiver 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. In

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of 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.

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ 17 CFR 240.19b-4(f)(6)(iii).

addition, the Exchange states that the proposed rule change is comparable to other policies and practices that are already established at another exchange.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the Exchange to modify its Fee Schedule to immediately adopt a policy relating to billing errors that is designed to provide clarity and certainty with respect to when Exchange fees and rebates may be considered final. Further, the proposed rule change is substantially similar to provisions currently in effect on other national securities exchanges¹⁵ and therefore does not raise any new or novel regulatory issues. Accordingly, the Commission waives the operative delay and designates the proposed rule change operative upon filing.¹⁶

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 change 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:

¹⁵ See, e.g., supra note 6.

¹⁶ For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email 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 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 email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<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.

Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment 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.¹⁷

J. Matthew DeLesDernier
Assistant Secretary

¹⁷ 17 CFR 200.30-3(a)(12).