

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 24

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

File No. * SR 2023 - * 28

Amendment No. (req. for Amendments *)

Filing by MIAX Emerald, LLC

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

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

Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	Rule <input type="checkbox"/> 19b-4(f)(1) <input type="checkbox"/> 19b-4(f)(4) <input type="checkbox"/> 19b-4(f)(2) <input type="checkbox"/> 19b-4(f)(5) <input type="checkbox"/> 19b-4(f)(3) <input checked="" type="checkbox"/> 19b-4(f)(6)	Submit with link to Prefiling or Request for Waiver option
-----------------------------------	--	--	--	--

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 *).

The Exchange proposes to amend its Fee Schedule as it relates to the timing Options Regulatory Fee changes.

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 * Tanya Last Name * Kitaigorovski

Title * AVP, Associate Counsel

E-mail * tkitaigorovski@MIAXGlobal.com

Telephone * (609) 413-5787 Fax

Signature

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

Date 10/05/2023 (Title *)

By Tanya Kitaigorovski AVP, Associate Counsel
(Name *)

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

Tanya Kitaigorovski Date: 2023.10.05 13:52:56 -0400

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

Add Remove View

SR-EMERALD-2023-28 19b-4.docx

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

Exhibit 1 - Notice of Proposed Rule Change *

Add Remove View

SR-EMERALD-2023-28 - Exhibit 1.do

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

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

Add Remove View

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

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

Add Remove View

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

Exhibit Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

Add Remove View

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

Exhibit Sent As Paper Document

Exhibit 4 - Marked Copies

Add Remove View

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

Exhibit 5 - Proposed Rule Text

Add Remove View

SR-EMERALD-2023-28 Exhibit 5.docx

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 “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 the MIAX Emerald Fee Schedule (the “Fee Schedule”) related to the Options Regulatory Fee.

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) Inapplicable.

(c) Inapplicable.

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 Exchange Board of Directors on February 2, 2023. 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 Tanya Kitaigorovski, AVP, Associate Counsel, at (609) 413-5787.

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

a. Purpose

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

The Exchange proposes to amend the Fee Schedule, to harmonize the language and processes relating to the Options Regulatory Fee (“ORF”) with the language and processes used by other options exchanges.³ By way of background, the ORF is designed to recover a material portion of the costs to the Exchange of the supervision and regulation of Member⁴ customer options business, including performing routine surveillances, investigations, examinations, financial monitoring, as well as policy, rulemaking, interpretive and enforcement activities. The revenue generated from the ORF covers a material portion and when combined with all of the Exchange's other regulatory fees and fines will cover a material portion of the Exchange's regulatory costs. The Exchange monitors the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed the Exchange's total regulatory costs. The Exchange monitors its regulatory costs and revenues at a minimum on a semi-annual basis. If the Exchange determines regulatory revenues exceed or are insufficient to cover a material portion of its regulatory costs, the Exchange will adjust the ORF by submitting a fee change filing to the Securities and Exchange Commission (the “Commission”). The Exchange notifies Members of adjustments to the ORF via a Regulatory Circular. The Exchange provides Members with such notice at least 30 calendar days prior to the effective date of the change.

³ See Securities and Exchange Act Release Nos. 98108 (August 10, 2023), 88 FR 55809 (August 16, 2023) (SR-CboeEDGX-2023-054) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend its Fee Schedule Related to the Options Regulatory Fee); 98109 (August 10, 2023), 88 FR 55801 (August 16, 2023) (SR-CboeBZX-2023-061) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend its Fee Schedule Related to the Options Regulatory Fee); 98446 (September 20, 2023), 88 FR 66100 (September 26, 2023) (SR-BOX-2023-24) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule for Trading on the BOX Options Market LLC Facility To Amend the Language and Process Related to the Options Regulatory Fee).

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.

The Regulatory Fee section of the Fee Schedule sets forth the details and description of how and when the ORF is assessed. For example, the Fee Schedule explicitly specifies that the Exchange may only increase or decrease the ORF semi-annually, and any such fee change will be effective on the first business day of February or August. The Fee Schedule further states that the Exchange will notify participants of any change in the amount of the fee at least 30 calendar days prior to the effective date of the change.

The Exchange proposes to update the Fee Schedule language relating to the timing of ORF changes. Particularly, the Exchange proposes to eliminate the strict requirement that the ORF may only be modified on the first business day of February or August, and also the explicit requirement that it must provide at least 30 calendar days prior notice to the effective date.

The Exchange first proposes to eliminate the requirement that ORF may only be modified on the first business day of February or August to afford the Exchange increased flexibility in amending the ORF. As noted above, the ORF is based in part on options transactions volume, and as such the amount of ORF collected is variable. If options transactions reported to OCC in a given month increase, the ORF collected from Members may increase as well. Similarly, if options transactions reported to OCC in a given month decrease, the ORF collected from Members may decrease as well. Accordingly, the Exchange monitors the amount of ORF collected to ensure that it does not exceed a material portion of the Exchange's total regulatory costs. If the Exchange determines that the amount of ORF collected exceeds costs, the proposed rule change allows the Exchange to adjust the ORF by submitting a fee change filing to the Commission in a month other than just February or August. Although the Exchange proposes to eliminate the explicit language in the fee schedule that provides the Exchange will adjust the ORF only semi-annually, and only on the first business day of February or August, it would

continue to monitor its regulatory costs and revenues at a minimum on a semi-annual basis and submit a proposed rule change for each modification of the ORF as needed.

The Exchange also proposes to eliminate the explicit language in the Fee Schedule that it will notify participants of any change in the amount of the fee at least 30 calendar days prior to the effective date of the change. Although the Exchange proposes to eliminate this language from the Fee Schedule, it notes that it will endeavor to notify Members of any planned change to the ORF by Regulatory Circular at least 30 calendar days prior to the effective date of such change. The Exchange believes this proposed change also provides the Exchange additional flexibility. For example, the Exchange often provides fee change notices on the first business day of the month. It may be the case that such date is less than 30 days from the effective date of proposed change (e.g., if the Exchange wished to amend the ORF, effective August 1, 2023, the Exchange would not have met the 30-day notice requirement if it had announced on the first business day of July, as it has been historic practice, since the first business day falls on July 3, 2023). As such, the proposed rule changes provide added flexibility while still committing to provide notice on the timing of any changes to the ORF and ensuring that Members are prepared to configure their systems to properly account for the ORF.

The Exchange notes that the proposed changes will result in ORF processes and fee schedule language that will align with those of its affiliated exchanges, Miami International Securities Exchange, LLC (“MIAX Options”) and MIAX PEARL, LLC (“MIAX Pearl”).⁵ Moreover, other options exchanges recently amended their fees to allow for flexibility to adjust ORF during months other than February or August.⁶ The Exchange believes the proposed change

⁵ The Exchange intends to submit an identical proposal for its affiliates MIAX Options and MIAX Pearl.

⁶ See supra note 3.

provides uniformity across its affiliated options exchanges and reduces potential confusion. It also provides the Exchange added flexibility as to when modifications to the ORF may occur.

Implementation Date

The Exchange will announce the effective date of the proposed changes by Regulatory Circular distributed to all Members.

b. Statutory Basis

The Exchange believes that the proposal 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.⁷ Specifically, the Exchange believes that the proposal is consistent with the 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 that the proposal 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. The Exchange also believes that the proposal is consistent with Section 6(b)(4) of the Act,¹⁰ which

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁹ Id.

¹⁰ 15 U.S.C. 78f(b)(4).

requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Members and other persons using its facilities.

The Exchange believes the proposed changes to the Fees Schedule are appropriate as it provides the Exchange with more flexibility in its assessment of ORF based on its periodic monitoring of ORF rates. The Exchange also represents that it will continue to monitor its regulatory costs and revenues at a minimum on a semi-annual basis, just as it, and its affiliated options exchanges (including MIAX Pearl and MIAX) do today. The Exchange believes that the proposed elimination of language specifying that the Exchange may only increase or decrease the ORF on the first business day February or August is reasonable because it is designed to afford the Exchange increased flexibility in making necessary adjustments to the ORF, as the Exchange is required to monitor the amount collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed total regulatory costs.

The Exchange also represents that it will endeavor to provide notice of any changes at least 30 days in advance of the effective date of such change, thereby providing Members with adequate time to make any necessary adjustments to accommodate any proposed changes. Taking out the strict requirements from the Fee Schedule, however, will provide the Exchange flexibility in modifying ORF and being able to adjust ORF even if it doesn't meet the strict 30-day deadline in the event extenuating circumstances prevent the Exchange from meeting this deadline or in the event such notice is a day or two less than 30 days due to when the first business days of the month fall. For example, as noted above, the Exchange often provides fee change notices on the first business day of the month. It may be the case that such date is less than 30 days from the effective date of proposed change (e.g., if the Exchange wished to amend the ORF, effective, August 1, 2023, the Exchange would not have met the 30-day notice

requirement if it had announced on the first business day of July, as it has been historic practice, since the first business day falls on July 3, 2023).

The Exchange believes that the proposal is reasonable, equitable and not unfairly discriminatory because it conforms to the process and fee schedule language used by two of its affiliated options exchanges, thereby providing consistency across the MIAX family options exchanges and reducing potential confusion. The proposed changes also apply uniformly to all Members subject to ORF. As noted above, other options exchanges are also not confined to making ORF changes on the first business day of February or August or required to provide 30 day notice.¹¹

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

The Exchange does not believe that the proposal will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In this regard and as indicated above, the Exchange notes that the proposal is substantially similar in all material respects to filings submitted by Cboe EDGX Exchange, Inc. ("EDGX"), Cboe BZX Exchange, Inc. ("BZX"), and BOX Options Market LLC ("BOX").¹² This proposal does not create an unnecessary or inappropriate inter-market burden on competition because it merely amends the Fee Schedule to modify the timing and notice requirements relating to the modification of the ORF and conforms to the timing and notice requirements used by other options exchanges within their fee schedules.¹³ Further, ORF is a regulatory fee that supports regulation in furtherance of the purposes of the Act. The Exchange is obligated to ensure that the amount of regulatory

¹¹ See supra note 3.

¹² Id.

¹³ Id.

revenue collected from the ORF, in combination with its other regulatory fees and fines, does not exceed regulatory costs and the proposed rule change does not seek to change that.

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 Act¹⁴ and Rule 19b-4(f)(6)¹⁵ 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.

The Exchange does not believe that the proposal raises any novel or unique substantive issues because it is substantially similar in all material respects to, and consistent with, a similar rule that is currently operative on another competing options exchange.¹⁶ The Exchange believes that this proposal, which is designed to promote a free and open market for the benefit of investors, does not raise any new, unique or substantive issues from those raised in the EDGX, BZX or Box filings. Accordingly, the Exchange believes that the proposal is eligible for

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f)(6).

¹⁶ See supra note 3.

immediately effective treatment under the Commission's current procedures for processing rule filings.

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.

MIAX Emerald has satisfied this requirement. Furthermore, a proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹⁷ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)¹⁸ 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.

Waiver of the operative delay is consistent with the protection of investors and the public interest because it will ensure fair competition among the exchanges by allowing the Exchange to

exercise more flexibility in its assessment of ORF based on its periodic monitoring of ORF rates.

The Exchange will also continue to monitor its regulatory costs and revenues at a minimum on a semi-annual basis, just as it does today. The Exchange also will endeavor to provide notice of

any changes to the ORF at least 30 days in advance of the effective date of such change, and as

such Members will continue to be provided with adequate time to make any necessary

adjustments to accommodate any proposed changes. The Exchange therefore believes any impact

of its proposed rule is de minimis. Taking out the strict requirements from the Fee Schedule

merely provides the Exchange flexibility in modifying ORF and being able to adjust ORF even if

it doesn't meet the strict 30-day deadline in the event extenuating circumstances prevent the

¹⁷ 17 CFR 240.19b-4(f)(6).

¹⁸ Id.

Exchange from meeting this deadline or in the event such notice is a day or two less than 30 days.

The proposed changes also do not present any novel or unique issues to consider as it merely conforms to the process and fee schedule language already used by other options exchanges.¹⁹ As noted above, other options exchanges are also not confined to making ORF changes on the first business day of February or August. As noted above, the proposed changes also apply uniformly to all Members subject to the ORF.

Further, as addressed above, the proposed change is not designed to address any competitive issues, but rather merely amends the Fee Schedule to modify the timing relating to the modification of the ORF and conforms to the timing and notice requirements used by other options exchanges within their fee schedules.²⁰ ORF is also a regulatory fee that supports regulation in furtherance of the purposes of the Act.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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

As discussed above, the Exchange believes that the proposal is substantially similar in all material respects to proposals submitted by EDGX, BZX, and BOX.²¹

¹⁹ See supra note 3.

²⁰ Id.

²¹ Id.

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. Copy of the applicable section of the Fee Schedule.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-EMERALD-2023-28)

October _____, 2023

Self-Regulatory Organizations: Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by MIAX Emerald LLC to Amend Its Fee Schedule

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 October ____, 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 the MIAX Emerald Options Exchange Fee Schedule (the “Fee Schedule”) related to the Options Regulatory Fee.

The text of the proposed rule change is available on the Exchange’s website at <https://www.miaxglobal.com/markets/us-options/emerald-options/rule-filings>, at MIAX’s principal office, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

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

1. Purpose

The Exchange proposes to amend the Fee Schedule, to harmonize the language and processes relating to the Options Regulatory Fee (“ORF”) with the language and processes used by other options exchanges.³ By way of background, the ORF is designed to recover a material portion of the costs to the Exchange of the supervision and regulation of Member⁴ customer options business, including performing routine surveillances, investigations, examinations, financial monitoring, as well as policy, rulemaking, interpretive and enforcement activities. The revenue generated from the ORF covers a material portion and when combined with all of the Exchange's other regulatory fees and fines will cover a material portion of the Exchange's regulatory costs. The Exchange monitors the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed the Exchange's total regulatory costs. The Exchange monitors its regulatory costs and revenues at a minimum on a semi-annual basis. If the Exchange determines regulatory revenues exceed or are insufficient to cover a material portion of its regulatory costs, the Exchange will adjust the ORF by submitting a fee change filing to the Securities and Exchange Commission (the

³ See Securities and Exchange Act Release Nos. 98108 (August 10, 2023), 88 FR 55809 (August 16, 2023) (SR-CboeEDGX-2023-054) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend its Fee Schedule Related to the Options Regulatory Fee); 98109 (August 10, 2023), 88 FR 55801 (August 16, 2023) (SR-CboeBZX-2023-061) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend its Fee Schedule Related to the Options Regulatory Fee); 98446 (September 20, 2023), 88 FR 66100 (September 26, 2023) (SR-BOX-2023-24) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule for Trading on the BOX Options Market LLC Facility To Amend the Language and Process Related to the Options Regulatory Fee).

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.

“Commission”). The Exchange notifies Members of adjustments to the ORF via a Regulatory Circular. The Exchange provides Members with such notice at least 30 calendar days prior to the effective date of the change.

The Regulatory Fee section of the Fee Schedule sets forth the details and description of how and when the ORF is assessed. For example, the Fee Schedule explicitly specifies that the Exchange may only increase or decrease the ORF semi-annually, and any such fee change will be effective on the first business day of February or August. The Fee Schedule further states that the Exchange will notify participants of any change in the amount of the fee at least 30 calendar days prior to the effective date of the change.

The Exchange proposes to update the Fee Schedule language relating to the timing of ORF changes. Particularly, the Exchange proposes to eliminate the strict requirement that the ORF may only be modified on the first business day of February or August, and also the explicit requirement that it must provide at least 30 calendar days prior notice to the effective date.

The Exchange first proposes to eliminate the requirement that ORF may only be modified on the first business day of February or August to afford the Exchange increased flexibility in amending the ORF. As noted above, the ORF is based in part on options transactions volume, and as such the amount of ORF collected is variable. If options transactions reported to OCC in a given month increase, the ORF collected from Members may increase as well. Similarly, if options transactions reported to OCC in a given month decrease, the ORF collected from Members may decrease as well. Accordingly, the Exchange monitors the amount of ORF collected to ensure that it does not exceed a material portion of the Exchange’s total regulatory costs. If the Exchange determines that the amount of ORF collected exceeds costs, the proposed rule change allows the Exchange to adjust the ORF by submitting a fee change filing to the Commission in a month other than just February or August. Although the Exchange proposes to

eliminate the explicit language in the fee schedule that provides the Exchange will adjust the ORF only semi-annually, and only on the first business day of February or August, it would continue to monitor its regulatory costs and revenues at a minimum on a semi-annual basis and submit a proposed rule change for each modification of the ORF as needed.

The Exchange also proposes to eliminate the explicit language in the Fee Schedule that it will notify participants of any change in the amount of the fee at least 30 calendar days prior to the effective date of the change. Although the Exchange proposes to eliminate this language from the Fee Schedule, it notes that it will endeavor to notify Members of any planned change to the ORF by Regulatory Circular at least 30 calendar days prior to the effective date of such change. The Exchange believes this proposed change also provides the Exchange additional flexibility. For example, the Exchange often provides fee change notices on the first business day of the month. It may be the case that such date is less than 30 days from the effective date of proposed change (e.g., if the Exchange wished to amend the ORF, effective August 1, 2023, the Exchange would not have met the 30-day notice requirement if it had announced on the first business day of July, as it has been historic practice, since the first business day falls on July 3, 2023). As such, the proposed rule changes provide added flexibility while still committing to provide notice on the timing of any changes to the ORF and ensuring that Members are prepared to configure their systems to properly account for the ORF.

The Exchange notes that the proposed changes will result in ORF processes and fee schedule language that will align with those of its affiliated exchanges, Miami International Securities Exchange, LLC (“MIAX Options”) and MIAX PEARL, LLC (“MIAX Pearl”).⁵ Moreover, other options exchanges recently amended their fees to allow for flexibility to adjust

⁵ The Exchange intends to submit an identical proposal for its affiliates MIAX Options and MIAX Pearl.

ORF during months other than February or August.⁶ The Exchange believes the proposed change provides uniformity across its affiliated options exchanges and reduces potential confusion. It also provides the Exchange added flexibility as to when modifications to the ORF may occur.

Implementation Date

The Exchange will announce the effective date of the proposed changes by Regulatory Circular distributed to all Members.

2. Statutory Basis

The Exchange believes that the proposal 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.⁷ Specifically, the Exchange believes that the proposal is consistent with the 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 that the proposal 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. The Exchange also believes that the proposal is consistent with Section 6(b)(4) of the Act,¹⁰ which

⁶ See supra note 3.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁹ Id.

¹⁰ 15 U.S.C. 78f(b)(4).

requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Members and other persons using its facilities.

The Exchange believes the proposed changes to the Fees Schedule are appropriate as it provides the Exchange with more flexibility in its assessment of ORF based on its periodic monitoring of ORF rates. The Exchange also represents that it will continue to monitor its regulatory costs and revenues at a minimum on a semi-annual basis, just as it, and its affiliated options exchanges (including MIAX Pearl and MIAX) do today. The Exchange believes that the proposed elimination of language specifying that the Exchange may only increase or decrease the ORF on the first business day February or August is reasonable because it is designed to afford the Exchange increased flexibility in making necessary adjustments to the ORF, as the Exchange is required to monitor the amount collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed total regulatory costs.

The Exchange also represents that it will endeavor to provide notice of any changes at least 30 days in advance of the effective date of such change, thereby providing Members with adequate time to make any necessary adjustments to accommodate any proposed changes. Taking out the strict requirements from the Fee Schedule, however, will provide the Exchange flexibility in modifying ORF and being able to adjust ORF even if it doesn't meet the strict 30-day deadline in the event extenuating circumstances prevent the Exchange from meeting this deadline or in the event such notice is a day or two less than 30 days due to when the first business days of the month fall. For example, as noted above, the Exchange often provides fee change notices on the first business day of the month. It may be the case that such date is less than 30 days from the effective date of proposed change (e.g., if the Exchange wished to amend the ORF, effective, August 1, 2023, the Exchange would not have met the 30-day notice

requirement if it had announced on the first business day of July, as it has been historic practice, since the first business day falls on July 3, 2023).

The Exchange believes that the proposal is reasonable, equitable and not unfairly discriminatory because it conforms to the process and fee schedule language used by two of its affiliated options exchanges, thereby providing consistency across the MIAX family options exchanges and reducing potential confusion. The proposed changes also apply uniformly to all Members subject to ORF. As noted above, other options exchanges are also not confined to making ORF changes on the first business day of February or August or required to provide 30 day notice.¹¹

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

The Exchange does not believe that the proposal will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In this regard and as indicated above, the Exchange notes that the proposal is substantially similar in all material respects to filings submitted by Cboe EDGX Exchange, Inc. (“EDGX”), Cboe BZX Exchange, Inc. (“BZX”), and BOX Options Market LLC (“BOX”).¹² This proposal does not create an unnecessary or inappropriate inter-market burden on competition because it merely amends the Fee Schedule to modify the timing and notice requirements relating to the modification of the ORF and conforms to the timing and notice requirements used by other options exchanges within their fee schedules.¹³ Further, ORF is a regulatory fee that supports regulation in furtherance of the purposes of the Act. The Exchange is obligated to ensure that the amount of regulatory

¹¹ See supra note 3.

¹² Id.

¹³ Id.

revenue collected from the ORF, in combination with its other regulatory fees and fines, does not exceed regulatory costs and the proposed rule change does not seek to change that.

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

Written comments were neither solicited nor received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,¹⁴ and Rule 19b-4(f)(2)¹⁵ 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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-EMERALD-2023-28 on the subject line.

¹⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁵ 17 CFR 240.19b-4(f)(2).

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-2023-28. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-EMERALD-2023-28 and should be

submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Sherry R. Haywood,

Assistant Secretary.

¹⁶ 17 CFR 200.30-3(a)(12).

Exhibit 5

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

MIAX Emerald Options Exchange Fee Schedule

* * * * *

2) Regulatory Fees

* * * * *

b) Options Regulatory Fee

The per-contract Options Regulatory Fee (“ORF”) is assessed by MIAX Emerald to each MIAX Emerald Member for all options transactions, including Mini Options, cleared or ultimately cleared by the Member that are cleared by OCC in the “customer” range, regardless of the exchange on which the transaction occurs. The ORF is not assessed on outbound linkage trades. The ORF is collected by OCC on behalf of MIAX Emerald from either (1) a Member that was the ultimate clearing firm for the transaction or (2) a non-Member that was the ultimate clearing firm where a Member was the executing clearing firm for the transaction. The Exchange uses reports from OCC to determine the identity of the executing clearing firm and ultimate clearing firm. [The Exchange may only increase or decrease the ORF semi-annually, and any such fee change will be effective on the first business day of February or August. The Exchange will notify participants via a Regulatory Circular of any change in the amount of the fee at least 30 calendar days prior to the effective date of the change.]

Options Regulatory Fee (ORF)	Per Executed Contract side
All Classes	\$0.00060

* * * * *