

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-99232; File No. SR-EMERALD-2023-31)

December 22, 2023

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Exchange Rule 517, Quote Types Defined

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 December 13, 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 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 is filing a proposal to amend Exchange Rule 517, Quote Types Defined.

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

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 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.

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

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

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 Rule 517, Quote Types Defined. Specifically, the Exchange proposes to adopt new Interpretations and Policies .02 to Rule 517 to adopt new risk protection behavior for replacement Standard quotes<sup>3</sup> that are rejected.

Background

Market Makers<sup>4</sup> on the Exchange have heightened obligations separate from other market participants. Transactions of a Market Maker should constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and Market Makers should not make bids<sup>5</sup> or offers<sup>6</sup> or enter into transactions that are inconsistent with such a course of dealings.<sup>7</sup> A quotation may only be entered by a Market Maker, and only in the options classes to which the Market Maker is appointed under Rule 602.<sup>8</sup> A Market Maker’s bid and offer for a series of option contracts shall state a price accompanied by the number of contracts at that price the Market Maker is willing to buy or sell upon receipt of an order or upon interaction with a quotation entered by another Market Maker on the Exchange.<sup>9</sup> Additionally, a Market Maker that enters a bid (offer) on the Exchange must enter an offer (bid) within the spread allowable under Rule 603(b)(4).<sup>10</sup>

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<sup>3</sup> A Standard quote is a quote submitted by a Market Maker that cancels and replaces the Market Maker’s previous Standard quote, if any. See Exchange Rule 517(a)(1).

<sup>4</sup> The term “Market Makers” refers to “Lead Market Makers”, “Primary Lead Market Makers” and “Registered Market Makers” collectively. See Exchange Rule 100.

<sup>5</sup> The term “bid” means a limit order or quote to buy one or more option contracts. See Exchange Rule 100.

<sup>6</sup> The term “offer” means a limit order or quote to sell one or more option contracts. See Exchange Rule 100.

<sup>7</sup> See Exchange Rule 603(a).

<sup>8</sup> See Exchange Rule 604(a).

<sup>9</sup> See Exchange Rule 604(b).

<sup>10</sup> See Exchange Rule 604(c).

The Exchange has three classes of Market Makers; Primary Lead Market Makers, Lead Market Makers, and Registered Market Makers.<sup>11</sup> Further, each class of Market Maker has its own separate and distinct quoting obligations. A Primary Lead Market Maker must provide continuous two-sided Standard quotes, which for the purpose of paragraph (e)(1)(i) of Rule 604 shall mean 90% of the time, for the options classes to which it is appointed.<sup>12</sup> A Primary Lead Market Maker must provide continuous two-sided Standard quotes in at least the lesser of 99% of the non-adjusted option series, or 100% of the non-adjusted option series minus one put-call pair, in each class in which the Primary Lead Market Maker is assigned.<sup>13</sup> A Lead Market Maker must provide continuous two-sided Standard quotes, which for the purpose of paragraph (e)(2)(i) of Rule 604 shall mean 90% of the time, for the options classes to which it is appointed.<sup>14</sup> A Lead Market Maker must provide continuous two-sided Standard quotes in at least 90% of the non-adjusted option series in each of its appointed classes. Such quotations must meet the bid/ask differential requirements of Rule 603(b)(4).<sup>15</sup> A Registered Market Maker must provide continuous two-sided Standard quotes throughout the trading day in 60% of the non-adjusted series that have a time to expiration of less than nine months in each of its appointed classes. For the purpose of paragraph (e)(3)(i) of Rule 604, continuous two-sided quoting shall mean 90% of the time, for the options classes to which the Registered Market Maker is appointed.<sup>16</sup>

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<sup>11</sup> See supra note 4.

<sup>12</sup> See Exchange Rule 604(e)(1)(i).

<sup>13</sup> See Exchange Rule 604(e)(1)(ii).

<sup>14</sup> See Exchange Rule 604(e)(2)(i).

<sup>15</sup> See Exchange Rule 604(e)(2)(ii).

<sup>16</sup> See Exchange Rule 604(e)(3)(i).

The Exchange offers several features to Market Makers designed to mitigate potential risks unique to Market Makers given their obligations on the Exchange. For example, the Exchange offers an Aggregate Risk Manager (“ARM”) protection which provides that the MIA System<sup>17</sup> will maintain a counting program (“counting program”) for each Market Maker who is required to submit continuous two-sided quotations pursuant to Rule 604 in each of their appointed option classes.<sup>18</sup> The System will engage the Aggregate Risk Manager in a particular option class when the counting program has determined that a Market Maker has traded during the specified time period a number of contracts equal to or above their Allowable Engagement Percentage. The Aggregate Risk Manager will then automatically remove the Market Maker’s Standard quotations from the Exchange’s disseminated quotation in all series of that particular option class until the Market Maker sends a notification to the System of the intent to reengage quoting and submits a new revised quotation.<sup>19</sup>

Additionally, the Exchange offers Market Makers Single Side Protection (“SSP”) functionality which provides that, if the full remaining size of a Market Maker’s complex Standard quote or cIOC eQuote in a strategy is exhausted by a trade, the System will trigger the SSP for the traded side of the strategy. When triggered, the System will cancel all complex Standard quotes and block all new inbound complex Standard quotes and cIOC eQuotes for that particular side of that strategy for that MPID.<sup>20</sup>

### Proposal

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<sup>17</sup> The term “System” means the automated trading system used by the Exchange for the trading of securities. See Exchange Rule 100.

<sup>18</sup> See Exchange Rule 612.

<sup>19</sup> See Exchange Rule 612(b)(1).

<sup>20</sup> See Exchange Rule 532(b)(8).

The Exchange now proposes to cancel a Market Maker’s Standard quote in certain scenarios when a replacement Standard quote submitted by the Market Maker is rejected. Specifically, the Exchange proposes to adopt new Interpretations and Policies .02 to Exchange Rule 517 which will provide that a replacement Standard quote that is rejected for a technical reason (as described below) will still cancel the target Standard quote.

A Standard quote is submitted by the Market Maker to the Exchange using the MIAX Express Interface (“MEI”). MEI is a messaging interface that MIAX members that are approved as Market Makers use to submit quotes for trading on the MIAX Options market. Market Makers are only allowed to submit quotes in the products of underlying instruments to which they are assigned.<sup>21</sup> Each message submitted to the Exchange via the MEI must pass a number of validity checks that are performed by the System. These include, but are not limited to, price and size checks. Specifically, Standard quote prices must not (i) be less than zero; (ii) exceed the maximum price; and (iii) must comply with the minimum trade increment<sup>22</sup> for that class.<sup>23</sup> Additionally, Standard quote sizes must not be less than zero and must not be less than the minimum quote size as defined in Rule 604(b)(2).<sup>24</sup> Collectively, these requirements constitute the technical reasons for which a replacement Standard quote may be rejected, but which will still result in the cancellation of the target Standard quote under the Exchange’s proposal.

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<sup>21</sup> See MIAX Emerald Options Exchange, Express Interface for Quoting and Trading Options, MEI Interface Specification, version 2.2 (7/28/2023), available at: <https://www.miaxglobal.com/markets/us-options/emerald-options/interface-specifications>.

<sup>22</sup> The price of Market Maker quotes shall be in the minimum trading increments applicable to the security under Rule 510. See Exchange Rule 604(b)(1).

<sup>23</sup> The terms “class of options” or “option class” mean all option contracts covering the same underlying security. See Exchange Rule 100.

<sup>24</sup> Exchange Rule 604(b)(2) provides that, the initial size of a Market Maker incoming Standard Quote and all other types of eQuotes must be for the minimum number of contracts, which minimum number shall be at least one (1) contract. The minimum number of contracts, which can vary according to type of quote or eQuote, shall be at least one (1) contract, will be determined by the Exchange on a class-by-class basis and announced to the Members through a Regulatory Circular.

The Exchange believes that removing the Standard quote that the Market Maker was attempting to alter promotes the quality of the Exchange's market as removing a Standard quote that was targeted for replacement but was not replaced due to a technical reason maintains the integrity of quotes available in the market by ensuring that all available quotes accurately represent Market Maker interest.

When a Market Maker's replacement Standard quote is rejected because of a technical reason the existing Standard quote will be cancelled by the Exchange. In addition to maintaining the integrity of the Exchange's market, the Exchange believes this functionality also provides an additional level of risk protection to Market Makers that are attempting to replace an existing Standard quote but are unable to as a result of a technical reason with the replacement Standard quote.

## 2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>25</sup> Specifically, the Exchange believes that its proposed rule change is consistent with Section 6(b)(5)<sup>26</sup> requirements in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in, securities, to remove impediments to and perfect the 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

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<sup>25</sup> 15 U.S.C. 78f(b).

<sup>26</sup> 15 U.S.C. 78f(b)(5).

proposed rule change is consistent with the Section (6)(b)(5)<sup>27</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers as the proposed rule will be uniformly applied to all Standard quote messages submitted by Market Makers on the Exchange.

The Exchange believes its proposal promotes just and equitable principles of trade and removes impediments to and perfects the mechanisms of a free and open market and a national market system as removing a Market Maker's Standard quote that the Market Maker has targeted for replacement, but failed to replace due to a technical reason with the replacement Standard quote message, promotes the quality of the Exchange's market by ensuring that all available quotes accurately represent Market Maker interest. When a Market Maker enters a replacement Standard quote a Market Maker has an expectation that the existing Standard quote will be cancelled, currently the existing Standard quote that the Market Maker intended to cancel may be executed if the replacement Standard quote is rejected which is contrary to the Market Maker's intent.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange does not believe that its proposed rule change will impose any burden on intra-market competition as the Rules of the Exchange apply equally to all Market Makers of the Exchange and all Market Makers that submit a replacement Standard quote that is rejected as a result of a technical reason will have the existing target Standard quote removed by the Exchange.

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<sup>27</sup> See id.

The Exchange does not believe that its proposed rule change will impose any burden on inter-market competition, as the Exchange's proposal is not a competitive filing. Rather the Exchange believes that its proposal may promote inter-market competition, as the Exchange's proposal will improve market quality on the Exchange which may improve competition for orders across all exchanges.

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 from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>28</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>29</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>30</sup> normally does not become operative prior to 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>31</sup> the Commission may 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 so that the proposed rule change may become operative immediately upon

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<sup>28</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>29</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, 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.

<sup>30</sup> 17 CFR 240.19b-4(f)(6).

<sup>31</sup> 17 CFR 240.19b-4(f)(6)(iii).



filing. The Exchange requested the waiver because it would ensure the integrity of quotes available in the market. The Exchange stated that the Exchange provides risk protection functionality specifically for Market Makers due to the heightened obligations that Market Makers have on the Exchange and that the proposed rule change would ensure that the quotes available in the marketplace accurately represent Market Maker interest. In addition, the Commission notes that the proposed rule change is substantively identical to a recent proposed rule change filed by another national securities exchange that is now operative.<sup>32</sup> For these reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.<sup>33</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 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:

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<sup>32</sup> See Securities Exchange Act Release No. 99041 (November 29, 2023), 88 FR 84376 (December 5, 2023) (SR-MIAX-2023-45); see also Interpretations and Policies .02 of MIAX Options Exchange Rule 517.

<sup>33</sup> For purposes only of waiving the 30-day operative delay, the Commission has also 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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-EMERALD-2023-31 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-2023-31. 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-2023-31 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.<sup>34</sup>

**Christina Z. Milnor,**

*Assistant Secretary.*

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<sup>34</sup> 17 CFR 200.30-3(a)(12), (59).