

transaction or investment strategy involving securities.

2. Whether to adopt new and amended rules and forms to require registered investment advisers and registered broker-dealers to provide a brief relationship summary to retail investors.

3. Whether to publish a Commission interpretation of the standard of conduct for investment advisers.

4. Whether to publish a Commission interpretation of the solely incidental prong of section 202(a)(11)(C) of the Investment Advisers Act of 1940.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

**CONTACT PERSON FOR MORE INFORMATION:** For further information, please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551-5400.

Dated: May 23, 2019.

**Vanessa A. Countryman,**  
Acting Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85910; File No. SR-EMERALD-2019-22]

### Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 503, Openings on the Exchange

May 22, 2019.

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 May 13, 2019, 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 is filing a proposal to amend Exchange Rule 503, Openings on the Exchange.

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

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

###### 1. Purpose

The Exchange proposes to amend Exchange Rule 503, Openings on the Exchange, to amend subsection (f)(2)(iv)(A)2. to adopt new rule text relating to the price at which an Intermarket Sweep Order (“ISO”) is routed in order to align the rule text to the operation of the System.<sup>3</sup>

The Exchange’s Opening Process <sup>4</sup> provides that if the calculated opening price included interest other than solely Exchange interest, the System will broadcast a System Imbalance Message to Exchange Members <sup>5</sup> and initiate a “Route Timer,” <sup>6</sup> not to exceed one second. If no new interest is received during the Route Timer, the System will route to other markets disseminating prices better than the Exchange’s opening price, execute marketable interest at the opening price on the Exchange, and route to other markets disseminating prices equal to the Exchange opening price if necessary.<sup>7</sup> Subsection 2. of this rule states that any order that is routed pursuant to this Rule (Rule 503) will be marked as an Intermarket Sweep Order (“ISO”), as defined in Rule 1400(h), with a limit price equal to the Exchange’s opening

price.<sup>8</sup> An Intermarket Sweep Order is a limit order for an option series that is routed to execute against the full displayed size of any Protected Bid, in the case of a limit order to sell, or any Protected Offer, in the case of a limit order to buy, for the options series with a price that is superior to the limit price of the ISO. A Member may submit an Intermarket Sweep Order to the Exchange only if it has simultaneously routed one or more additional Intermarket Sweep Orders to execute against the full displayed size of any Protected Bid, in the case of a limit order to sell, or Protected Offer, in the case of a limit order to buy, for an options series with a price that is superior to the limit price of the Intermarket Sweep Order. An ISO may be either an Immediate-Or-Cancel Order or an order that expires on the day it is entered.<sup>9</sup>

As described in the Exchange’s current rule, the Exchange will route to other markets disseminating prices better than the Exchange’s opening price and will also route to other markets disseminating prices equal to the Exchange opening price if necessary.<sup>10</sup> The Exchange recently identified an inconsistency between the Exchange’s rule and the Exchange’s System behavior regarding the price of these routed orders. Given that the order is being routed to another market center for execution, the limit price of the order being routed should be equal to the away market’s displayed price rather than be equal to the Exchange’s opening price (although, in certain circumstances the away market’s displayed price may be equal to the Exchange’s opening price) as currently articulated in the Rule.

The Exchange believes that the System is operating correctly and that the rule text inadvertently described the price being used for these orders as the Exchange’s opening price. The Exchange now proposes to amend subsection 2. of Rule 503(f)(2)(iv)(A) to adopt new rule text to replace the phrase, “Exchange’s opening price” with the phrase, “away market’s displayed price.” The new proposed rule will state that any order that is routed pursuant to this Rule will be marked as an Intermarket Sweep Order (“ISO”), as defined in Rule 1400(h), with a limit price equal to the away market’s displayed price. This proposed change conforms the rule to the System’s behavior.

<sup>3</sup> The term “System” means the automated trading system used by the Exchange for the trading of securities. See Exchange Rule 100.

<sup>4</sup> See Exchange Rule 503(f).

<sup>5</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>6</sup> See Exchange Rule 529(b)(2).

<sup>7</sup> See Exchange Rule 503(f)(2)(iv)(A).

<sup>8</sup> See Exchange Rule 503(f)(2)(iv)(A)2.

<sup>9</sup> See Exchange Rule 1400(h).

<sup>10</sup> See *supra* note 7.

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

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

## 2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act<sup>11</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>12</sup> in particular, 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 facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange's proposal removes impediments to and perfects the mechanisms of a free and open market and a national market system and, in general, protects investors and the public interest by ensuring that interest routed as a result of an imbalance on the Exchange during its Opening Process is properly priced for execution. This reduces the risk of trading through<sup>13</sup> other market centers and promotes just and equitable principles of trade by routing orders to market centers where they may receive an execution.

The Exchange's proposal more accurately describes how the System prices interest being routed pursuant to the Opening Process. The Exchange believes its proposal provides accuracy and clarity to the rule and protects investors and the public interest by clearly and accurately describing Exchange functionality which may influence investors' decisions concerning the submission of their orders.

### *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 Exchange does not believe the proposed rule change will impose any burden on inter-market competition as exchanges routinely route orders to one another and the Exchange has been operating in this fashion since it began operations on March 1, 2019.<sup>14</sup>

Additionally, the Exchange does not believe the proposed rule change will impose any burden on inter-market competition as the proposed rule change clarifies current Exchange functionality and is not a competitive filing.

Additionally, the Exchange does not believe that the proposed rule change will impose any burden on intra-market competition as the Opening Process affects all Members equally, and the specific situation that the proposal addresses occurs only in the limited instance as described herein.

### *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 Act<sup>15</sup> and Rule 19b-4(f)(6)<sup>16</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:

as a national securities exchange.); *See also* MIAx Emerald Regulatory Circular 2019-29.

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

<sup>16</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.

### *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](mailto:rule-comments@sec.gov). Please include File Number SR-EMERALD-2019-22 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-2019-22. 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-2019-22 and should be submitted on or before June 19, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Eduardo A. Aleman,**  
*Deputy Secretary.*

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

<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

<sup>13</sup> A trade-through occurs when one trading center executes an order at a price that is inferior to the price of a protected quotation, often representing an investor limit order, displayed by another trading center.

<sup>14</sup> *See* Securities Exchange Act Release No. 84891 (December 20, 2018), 83 FR 67421 (December 28, 2018) (File No. 10-233) (order approving application of MIAx Emerald, LLC for registration