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

File No. * SR 2022 - * 21

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"/>
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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 checked="" type="checkbox"/> 19b-4(f)(2) <input type="checkbox"/> 19b-4(f)(5) <input type="checkbox"/> 19b-4(f)(3) <input type="checkbox"/> 19b-4(f)(6)		
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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 *).

Proposal to amend the Fee Schedule to amend certain Simple Maker rebates for Priority Customer orders in Penny Classes.

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 * Michael Last Name * Slade

Title * AVP, Associate Counsel

E-mail * mslade@miami-holdings.com

Telephone * (609) 897-8499 Fax

Signature

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

Date 05/18/2022 (Title *)

By Michael Slade (Name *) AVP, Associate Counsel

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

Michael Slade Date: 2022.05.18 15:44:51 -04'00'

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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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 *

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SR-EMERALD-2022-21 - Exhibit 1.doc

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

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

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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

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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

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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

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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

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SR-EMERALD-2022-21 - Exhibit 5.doc

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

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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 Options Exchange Fee Schedule (the “Fee Schedule”).

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1, and a copy of the applicable section of the Fee Schedule is attached hereto as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by the Chief Executive Officer of the Exchange or his designee pursuant to authority delegated by the MIAX Emerald Board of Directors on January 28, 2021. Exchange staff will advise the Board of Directors of any action taken pursuant to delegated authority. No other action by the Exchange is necessary for the filing of the proposed rule change.

Questions and comments on the proposed rule change may be directed to Michael Slade, AVP, Associate Counsel, at (609) 897-8499.

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

a. Purpose

The Exchange proposes to amend Section 1)a)i) of the Fee Schedule to amend the Simple Maker (defined below) rebates in all Tiers (defined below) for options transactions in Penny

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Classes (defined below) for executed Priority Customer³ Origin orders. The Exchange originally filed this proposal on April 28, 2022 (SR-EMERALD-2022-17). On May 10, 2022, the Exchange withdrew SR-EMERALD-2022-17 and resubmitted this proposal (SR-EMERALD-2022-20). On May 18, 2022, the Exchange withdrew SR-EMERALD-2022-20 and resubmitted this proposal.

Background

The Exchange currently assesses transaction rebates and fees to all market participants, which are based upon a threshold tier structure (“Tier”). Tiers are determined on a monthly basis and are based on three alternative calculation methods, as defined in Section 1)a)ii) of the Fee Schedule. The calculation method that results in the highest Tier achieved by the Member⁴ shall apply to all Origin types by the Member, except the Priority Customer Origin type. For the Priority Customer Origin calculation, the Tier applied for a Member and its Affiliates’⁵ is solely

³ “Priority Customer” means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). See Exchange Rule 100, including Interpretation and Policy .01.

⁴ “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 the Definitions Section of the Fee Schedule and Exchange Rule 100.

⁵ “Affiliate” means (i) an affiliate of a Member of at least 75% common ownership between the firms as reflected on each firm’s Form BD, Schedule A, or (ii) the Appointed Market Maker of an Appointed EEM (or, conversely, the Appointed EEM of an Appointed Market Maker). An “Appointed Market Maker” is a MIAX Emerald Market Maker (who does not otherwise have a corporate affiliation based upon common ownership with an EEM) that has been appointed by an EEM and an “Appointed EEM” is an EEM (who does not otherwise have a corporate affiliation based upon common ownership with a MIAX Emerald Market Maker) that has been appointed by a MIAX Emerald Market Maker, pursuant to the following process. A MIAX Emerald Market Maker appoints an EEM and an EEM appoints a MIAX Emerald Market Maker, for the purposes of the Fee Schedule, by each completing and sending an executed Volume Aggregation Request Form by email to membership@miaxoptions.com no later than 2 business days prior to the first business day of the month in which the designation is to become effective. Transmittal of a validly completed and executed form to the Exchange

determined by calculation Method 3, as defined in Section 1)a)ii) of the Fee Schedule, titled “Total Priority Customer, Maker sides volume, based on % of CTCV (‘Method 3’).” The monthly volume thresholds for each of the methods, associated with each Tier, are calculated as the total monthly volume executed by the Member in all options classes on MIAX Emerald in the relevant Origins and/or applicable liquidity, not including Excluded Contracts⁶, (as the numerator) expressed as a percentage of (divided by) Customer Total Consolidated Volume (“CTCV”) (as the denominator). CTCV is calculated as the total national volume cleared at The Options Clearing Corporation (“OCC”) in the Customer range in those classes listed on MIAX Emerald for the month for which fees apply, excluding volume cleared at the OCC in the Customer range executed during the period of time in which the Exchange experiences an “Exchange System Disruption”⁷ (solely in the option classes of the affected Matching Engine)⁸. In addition, the per contract transaction rebates and fees shall be applied retroactively to all eligible volume once the Tier has been reached by the Member. Members that place resting

along with the Exchange’s acknowledgement of the effective designation to each of the Market Maker and EEM will be viewed as acceptance of the appointment. The Exchange will only recognize one designation per Member. A Member may make a designation not more than once every 12 months (from the date of its most recent designation), which designation shall remain in effect unless or until the Exchange receives written notice submitted 2 business days prior to the first business day of the month from either Member indicating that the appointment has been terminated. Designations will become operative on the first business day of the effective month and may not be terminated prior to the end of the month. Execution data and reports will be provided to both parties. See the Definitions Section of the Fee Schedule.

⁶ The term “Excluded Contracts” means any contracts routed to an away market for execution. See the Definitions Section of the Fee Schedule.

⁷ The term “Exchange System Disruption” means an outage of a Matching Engine or collective Matching Engines for a period of two consecutive hour or more, during trading hours. See the Definitions Section of the Fee Schedule.

⁸ A “Matching Engine” is a part of the MIAX Emerald electronic system that processes options orders and trades on a symbol-by-symbol basis. See the Definitions Section of the Fee Schedule.

liquidity, i.e., orders on the MIAX Emerald System, will be assessed the specified “maker” rebate or fee (each a “Maker”) and Members that execute against resting liquidity will be assessed the specified “taker” fee or rebate (each a “Taker”).⁹ Members are also assessed lower transaction fees and smaller rebates for order executions in standard option classes in the Penny Interval Program¹⁰ (“Penny Classes”) than for order executions in standard option classes which are not in the Penny Program (“non-Penny Classes”), for which Members will be assessed a higher transaction fees and larger rebates.

Proposal

First, the Exchange proposes to amend Section 1)a)i) of the Fee Schedule to amend the Simple Maker rebates in Tiers 1, 2 and 3 for options transactions in Penny Classes for executed Priority Customer Origin orders. Currently, the Exchange provides a Simple Maker rebate of (\$0.43) per contract for options transactions in most Penny Classes (excluding SPY, QQQ, and IWM) for executed Priority Customer Origin orders in Tiers 1, 2 and 3 per the rate table. The Exchange also provides a higher Simple Maker rebate of (\$0.45) per contract for options transactions in Penny Classes for SPY, QQQ and IWM, which is noted by the symbol “∇” following the tables of rebates and fees in Section 1)a)i) of the Fee Schedule.

⁹ For a Priority Customer complex order taking liquidity in both a Penny Class and non-Penny Class against Origins other than Priority Customer, the Priority Customer order will receive a rebate based on the Tier achieved.

¹⁰ See Securities Exchange Act Release No. 88993 (June 2, 2020), 85 FR 35145 (June 8, 2020) (SR-EMERALD-2020-05) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 510, Minimum Price Variations and Minimum Trading Increments, To Conform the Rule to Section 3.1 of the Plan for the Purpose of Developing and Implementing Procedures Designed To Facilitate the Listing and Trading of Standardized Options) (the “Penny Program”).

The Exchange now proposes to amend symbol “∇” to modify the Simple Maker rebate for all options in Penny Classes for executed Priority Customer Origin orders in Tiers 1, 2 and 3 depending on whether the contra is an Affiliated Market Maker.¹¹ In particular, the Exchange proposes to provide a lower Simple Maker rebate of (\$0.37) per contract for options in all Penny Classes for executed Priority Customer Origin orders in Tiers 1, 2 and 3 when the contra is an Affiliated Market Maker. To show the difference in rebates depending on whether the contra is an Affiliated Market Maker, the Exchange proposes to amend the text in symbol “∇” to now read as follows: “The Simple Maker rebate in SPY, QQQ and IWM is (\$0.45) for Priority Customer Origin in Tiers 1, 2 and 3 when the contra is not an Affiliated Market Maker. The Simple Maker rebate in all Penny Classes is (\$0.37) for Priority Customer Origin in Tiers 1, 2 and 3 when the contra is an Affiliated Market Maker.” In summary, with the proposed changes, Priority Customer Origin orders in Tiers 1, 2 and 3 will receive a) the current (\$0.43) per contract rebate for most Penny Classes (excluding SPY, QQQ, and IWM classes) when the contra is not an Affiliated Market Maker; b) will continue to receive the current (\$0.45) per contract rebate for SPY, QQQ, and IWM classes when the contra is not an affiliated Market Maker; and c) will receive the (\$0.37) per contract rebate in all Penny Classes when the contra is an affiliated Market Maker.

Next, the Exchange proposes to amend Section 1)a)i) of the Fee Schedule to amend the Simple Maker rebate in Tier 4 for options transactions in Penny Classes for executed Priority Customer Origin orders. Currently, the Exchange provides a Simple Maker rebate of (\$0.53) for executed Priority Customer Origin orders in Tier 4 in options in Penny Classes if the contra is

¹¹ The term “Market Maker” refers to “Lead Market Maker” (“LMM”), “Primary Lead Market Maker” (“PLMM”) and “Registered Market Maker” (“RMM”), collectively. See the Definitions Section of the Fee Schedule and Exchange Rule 100.

not an Affiliated Market Maker. If the contra is an Affiliated Market Maker, the Exchange provides a lower Simple Maker rebate of (\$0.43) for executed Priority Customer Origin orders in Tier 4 in options in Penny Classes.¹² Both the lower Simple Maker rebate of (\$0.43) and the rate table rebate of (\$0.53) depending on whether the contra is or is not an Affiliated Market Maker for executed Priority Customer Origin orders in Tier 4 in Penny Classes is denoted by the symbol “□” following the table of fees and rebates in Section 1)a)i) of the Fee Schedule.

The Exchange now proposes to lower the Simple Maker rebate in Tier 4 for options transactions in Penny Classes for executed Priority Customer orders when the contra is an Affiliated Market Maker. Specifically, the Exchange proposes to lower the Simple Maker rebate for executed Priority Customer orders in options in Penny Classes in Tier 4 from (\$0.43) to (\$0.37) when the contra is an Affiliated Market Maker. To be clear, executed Priority Customer Origin order in options in Penny Classes in Tier 4 will continue to receive the current (\$0.53) per contract rebate when the contra is not an Affiliated Market Maker. The proposed change would be reflected in current footnote “□” for Penny Classes. Accordingly, the Exchange proposes to update footnote “□” to now read: “This Maker rebate is for executed Priority Customer Simple Orders when the contra is not an Affiliated Market Maker. When the contra is an Affiliated Market Maker, this Maker rebate for executed Priority Customer Simple Orders will be (\$0.37).”

The purpose of adjusting the specified Simple Maker rebate is for business and competitive reasons. In order to attract order flow, the Exchange initially set its Maker rebates

¹² See Fee Schedule, Section 1)a)i), note “□”. See Securities Exchange Act Release Nos. 94406 (March 14, 2022), 87 FR 15460 (March 18, 2022) (SR-EMERALD-2022-10) (lowering Simple Maker rebate in Tier 4 for options transactions in Penny Classes for executed Priority Customer orders when the contra is an Affiliated Market Maker from (\$0.49) to (\$0.43) and 89927 (September 21, 2020), 85 FR 60498 (September 25, 2020) (SR-EMERALD-2020-07) (establishing lower Priority Customer Tier 4 Simple Maker rebates in Penny Classes when the contra is an Affiliated Market Maker).

and Taker fees so that they were meaningfully higher/lower than other options exchanges that operate comparable maker/taker pricing models.¹³ The Exchange now believes that it is appropriate to further adjust these specified Maker rebates so that they are more in line with other exchanges, but will still remain highly competitive such that they should enable the Exchange to continue to attract order flow and maintain market share.¹⁴

Implementation

The proposed changes are immediately effective.

b. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act¹⁵ in general, and furthers the objectives of Section 6(b)(4) of the Act,¹⁶ in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange members and issuers and other persons using its facilities, and 6(b)(5) of the Act,¹⁷ in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in facilitating transactions in securities, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest.

¹³ See Securities Exchange Act Release No. 85393 (March 21, 2019), 84 FR 11599 (March 27, 2019) (SR-EMERALD-2019-15).

¹⁴ See Cboe BZX Options Exchange Fee Schedule, under “Transaction Fees” (providing Customer rebates for Penny Program Securities ranging from \$0.25 to \$0.53); see also Nasdaq Stock Market, Options 7, Pricing Schedule, Section 2 Nasdaq Options Market – Fees and Rebates, note 2 (providing lower rates when the Participant is both the buyer and seller).

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(4).

¹⁷ 15 U.S.C. 78f(b)(1) and (b)(5).

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”¹⁸

There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has a market share of more than approximately 13-14% of the equity options market.¹⁹ Therefore, no exchange possesses significant pricing power. More specifically, as of May 17, 2022, the Exchange had a market share of approximately 3.68% of executed volume of multiply-listed equity options for the month of May 2022.²⁰

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can discontinue or reduce use of certain categories of products and services, terminate an existing membership or determine to not become a new member, and/or shift order flow, in response to transaction fee changes. For example, on February 28, 2019, the Exchange’s affiliate, MIAX PEARL, LLC (“MIAX Pearl”), filed with the Commission a proposal to increase Taker fees in certain Tiers for options transactions in certain Penny classes for Priority Customers and decrease Maker rebates in certain Tiers for options

¹⁸ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

¹⁹ See “The Market at a Glance,” (last visited May 17, 2022), [available at https://www.miaxoptions.com/](https://www.miaxoptions.com/).

²⁰ See id.

transactions in Penny classes for Priority Customers (which fee was to be effective March 1, 2019).²¹ MIA X Pearl experienced a decrease in total market share for the month of March 2019, after the proposal went into effect. Accordingly, the Exchange believes that the MIA X Pearl March 1, 2019 fee change, to increase certain transaction fees and decrease certain transaction rebates, may have contributed to the decrease in MIA X Pearl's market share and, as such, the Exchange believes competitive forces constrain the Exchange's, and other options exchanges, ability to set transaction fees and market participants can shift order flow based on fee changes instituted by the exchanges.

The Exchange believes its proposal to amend the Simple Maker rebates for options transactions in Penny Classes for Priority Customers is reasonable, equitable and not unfairly discriminatory because all similarly situated market participants in the same Origin type are subject to the same tiered Maker rebates and Taker fees. The Exchange believes it is equitable and not unfairly discriminatory to reduce the Simple Maker rebates for Priority Customer orders in Penny Classes when the contra is an Affiliated Market Maker for business and competitive reasons because the Exchange initially set its Simple Maker rebates for such orders higher than certain other options exchanges that operate comparable maker/taker pricing models.²² The Exchange now believes that it is appropriate to further decrease the specified Simple Maker rebates so that they are more in line with other exchanges, but will remain highly competitive such that they should enable the Exchange to continue to attract order flow and maintain market share.²³

²¹ See Securities Exchange Act Release No. 85304 (March 13, 2019), 84 FR 10144 (March 19, 2019) (SR-PEARL-2019-07).

²² See supra note 13.

²³ See supra note 14.

The Exchange believes that it is equitable and not unfairly discriminatory to continue to provide higher rebates for Priority Customer orders (even with the proposed changes) than to orders from origin types that are not Priority Customer. A Priority Customer is by definition not a broker or dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).²⁴ This limitation does not apply to participants on the Exchange whose behavior is substantially similar to that of market professionals, including orders from Non-MIAX Emerald Market Makers, Firm Proprietary/Broker-Dealer Origins, and Non-Priority Customers, who will generally submit a higher number of orders (many of which do not result in executions) than Priority Customers. Furthermore, the Exchange believes that even with the proposed changes, the rebates for Priority Customers will continue to encourage Members to send Priority Customer orders to the Exchange, which benefits all Exchange participants by providing more trading opportunities and tighter spreads.

The Exchange believes it is reasonable and equitable to reduce the Simple Maker rebates for Priority Customer orders in Penny Classes when the contra is an Affiliated Market Maker (versus when the contra is not an Affiliated Market Maker) because the Exchange already offers certain potential fee benefits to Members and their Affiliates from their aggregated volume. For example, pursuant to Section 1)a)ii) of the Fee Schedule, the Tier applied for a Member and its Affiliates' Priority Customer Origin is solely determined by Method 3 (Priority Customer Maker volume). However, the Market Maker Origin receives the highest Tier based on any of the three application methods, including based on Tier achieved by their Affiliated Priority Customer Maker order flow. Thus, for example, if a Market Maker and its Affiliates naturally achieved

²⁴ See supra note 3.

Tier 1 from Market Maker Volume, the Exchange will also look at their Priority Customer order flow and if that Priority Customer order flow achieved higher Tiers (i.e., Tier 4), the Market Maker and its Affiliates will receive the benefit of the Tier 4 rates based on their Priority Customer order flow. The Exchange also believes it is equitable and not unfairly discriminatory to continue to provide different rebates depending on whether the contra is or is not an Affiliated Market Maker for executed Priority Customer Origin orders because competing exchanges also provide different rates depending on whether the executing buyer and seller are affiliated.²⁵ Further, the Exchange's affiliate, Miami International Securities Exchange, LLC ("MIAX"), provides a similar pricing structure for certain complex order transactions for MIAX Members and their Affiliates that aggregate their order flow.²⁶ Accordingly, the Exchange believes it is reasonable, equitable, and not unfairly discriminatory to provide a lower rebate for certain Priority Customer Origin orders when the executing buyer and seller are the same Member or Affiliates.

Furthermore, the proposed decrease to the Simple Maker rebates for Priority Customers when the contra is an Affiliated Market Maker promotes just and equitable principles of trade, fosters cooperation and coordination with persons engaged in facilitating transactions in securities, and protects investors and the public interest, because even with the decrease, the Exchange's proposed Simple Maker rebates for such orders still remain highly competitive with certain other options exchanges offering comparable pricing models, and should enable the

²⁵ See, e.g., Nasdaq Stock Market, Options 7, Pricing Schedule, Section 2 Nasdaq Options Market – Fees and Rebates, note 2 (providing lower rates when the Participant is both the buyer and seller).

²⁶ See MIAX Fee Schedule, Section 1)a)iii), notes "◆" and "■".

Exchange to continue to attract order flow and maintain market share.²⁷ The Exchange believes that the amount of such rebates, with the proposed decrease, will continue to encourage those market participants to send Priority Customer orders to the Exchange.

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

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

Intra-Market Competition

The Exchange believes that the proposed changes to the specified Simple Maker rebates for the applicable market participants should continue to encourage the provision of liquidity that enhances the quality of the Exchange's market and increases the number of trading opportunities on the Exchange for all participants who will be able to compete for such opportunities. The proposed rule change should enable the Exchange to continue to attract and compete for Priority Customer order flow with other exchanges. The Exchange believes that even with the proposed changes, the rebates for Priority Customers will continue to encourage Members to send Priority Customer orders to the Exchange, which benefits all Exchange participants by providing more trading opportunities and tighter spreads. However, this competition does not create an undue burden on competition but rather offers all market participants the opportunity to receive the benefit of competitive pricing.

The Exchange believes that the pricing structure to provide different rebates depending on whether the contra is or is not an Affiliated Market Maker for executed Priority Customer Origin orders will not impose any undue burden on intra-market competition because the different rates apply equally to all Members that aggregate their order flow on the Exchange.

²⁷ See supra note 14.

Further, this pricing structure is not new or novel and has been in place at the Exchange, its affiliate, MIAX, and competing exchanges for years.²⁸

Inter-Market Competition

The Exchange operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has a market share of more than approximately 13-14% of the equity options market.²⁹ Therefore, no exchange possesses significant pricing power. More specifically, as of May 17, 2022, the Exchange had a market share of approximately 3.68% of executed volume of multiply-listed equity options for the month of May 2022.³⁰ Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity options order flow. In such an environment, the Exchange must continually adjust its transaction and non-transaction fees to remain competitive with other exchanges and to attract order flow. The Exchange believes that the proposed rule changes reflect this competitive environment because it modifies the Exchange's rebates in a manner that will allow the Exchange to remain competitive.

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.

²⁸ See supra notes 12, 25 and 26.

²⁹ See supra note 19.

³⁰ See id.

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)(ii) of the Act,³¹ and Rule 19b-4(f)(2) thereunder³² the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

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

Not applicable.

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. Notice of proposed rule for publication in the Federal Register.

5. Applicable Section of the Fee Schedule.

³¹ 15 U.S.C. 78s(b)(3)(A)(ii).

³² 17 CFR 240.19b-4.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-EMERALD-2022-21)

May __, 2022

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 May 18, 2022, 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 the MIAX Emerald Fee Schedule (the “Fee Schedule”).

The text of the proposed rule change is available on the Exchange’s website at <http://www.miaxoptions.com/rule-filings/emerald>, 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 Section 1)a)i) of the Fee Schedule to amend the Simple Maker (defined below) rebates in all Tiers (defined below) for options transactions in Penny Classes (defined below) for executed Priority Customer³ Origin orders. The Exchange originally filed this proposal on April 28, 2022 (SR-EMERALD-2022-17). On May 10, 2022, the Exchange withdrew SR-EMERALD-2022-17 and resubmitted this proposal (SR-EMERALD-2022-20). On May 18, 2022, the Exchange withdrew SR-EMERALD-2022-20 and resubmitted this proposal.

Background

The Exchange currently assesses transaction rebates and fees to all market participants, which are based upon a threshold tier structure (“Tier”). Tiers are determined on a monthly basis and are based on three alternative calculation methods, as defined in Section 1)a)ii) of the Fee Schedule. The calculation method that results in the highest Tier achieved by the Member⁴ shall apply to all Origin types by the Member, except the Priority Customer Origin type. For the Priority Customer Origin calculation, the Tier applied for a Member and its Affiliates’⁵ is solely

³ “Priority Customer” means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). See Exchange Rule 100, including Interpretation and Policy .01.

⁴ “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 the Definitions Section of the Fee Schedule and Exchange Rule 100.

⁵ “Affiliate” means (i) an affiliate of a Member of at least 75% common ownership between the firms as reflected on each firm’s Form BD, Schedule A, or (ii) the Appointed

determined by calculation Method 3, as defined in Section 1)a)ii) of the Fee Schedule, titled “Total Priority Customer, Maker sides volume, based on % of CTCV (‘Method 3’).” The monthly volume thresholds for each of the methods, associated with each Tier, are calculated as the total monthly volume executed by the Member in all options classes on MIAX Emerald in the relevant Origins and/or applicable liquidity, not including Excluded Contracts⁶, (as the numerator) expressed as a percentage of (divided by) Customer Total Consolidated Volume (“CTCV”) (as the denominator). CTCV is calculated as the total national volume cleared at The Options Clearing Corporation (“OCC”) in the Customer range in those classes listed on MIAX Emerald for the month for which fees apply, excluding volume cleared at the OCC in the Customer range executed during the period of time in which the Exchange experiences an

Market Maker of an Appointed EEM (or, conversely, the Appointed EEM of an Appointed Market Maker). An “Appointed Market Maker” is a MIAX Emerald Market Maker (who does not otherwise have a corporate affiliation based upon common ownership with an EEM) that has been appointed by an EEM and an “Appointed EEM” is an EEM (who does not otherwise have a corporate affiliation based upon common ownership with a MIAX Emerald Market Maker) that has been appointed by a MIAX Emerald Market Maker, pursuant to the following process. A MIAX Emerald Market Maker appoints an EEM and an EEM appoints a MIAX Emerald Market Maker, for the purposes of the Fee Schedule, by each completing and sending an executed Volume Aggregation Request Form by email to membership@miaxoptions.com no later than 2 business days prior to the first business day of the month in which the designation is to become effective. Transmittal of a validly completed and executed form to the Exchange along with the Exchange’s acknowledgement of the effective designation to each of the Market Maker and EEM will be viewed as acceptance of the appointment. The Exchange will only recognize one designation per Member. A Member may make a designation not more than once every 12 months (from the date of its most recent designation), which designation shall remain in effect unless or until the Exchange receives written notice submitted 2 business days prior to the first business day of the month from either Member indicating that the appointment has been terminated. Designations will become operative on the first business day of the effective month and may not be terminated prior to the end of the month. Execution data and reports will be provided to both parties. See the Definitions Section of the Fee Schedule.

⁶ The term “Excluded Contracts” means any contracts routed to an away market for execution. See the Definitions Section of the Fee Schedule.

“Exchange System Disruption”⁷ (solely in the option classes of the affected Matching Engine)⁸. In addition, the per contract transaction rebates and fees shall be applied retroactively to all eligible volume once the Tier has been reached by the Member. Members that place resting liquidity, i.e., orders on the MIAX Emerald System, will be assessed the specified “maker” rebate or fee (each a “Maker”) and Members that execute against resting liquidity will be assessed the specified “taker” fee or rebate (each a “Taker”).⁹ Members are also assessed lower transaction fees and smaller rebates for order executions in standard option classes in the Penny Interval Program¹⁰ (“Penny Classes”) than for order executions in standard option classes which are not in the Penny Program (“non-Penny Classes”), for which Members will be assessed a higher transaction fees and larger rebates.

Proposal

First, the Exchange proposes to amend Section 1)a)i) of the Fee Schedule to amend the Simple Maker rebates in Tiers 1, 2 and 3 for options transactions in Penny Classes for executed Priority Customer Origin orders. Currently, the Exchange provides a Simple Maker rebate of (\$0.43) per contract for options transactions in most Penny Classes (excluding SPY, QQQ, and

⁷ The term “Exchange System Disruption” means an outage of a Matching Engine or collective Matching Engines for a period of two consecutive hour or more, during trading hours. See the Definitions Section of the Fee Schedule.

⁸ A “Matching Engine” is a part of the MIAX Emerald electronic system that processes options orders and trades on a symbol-by-symbol basis. See the Definitions Section of the Fee Schedule.

⁹ For a Priority Customer complex order taking liquidity in both a Penny Class and non-Penny Class against Origins other than Priority Customer, the Priority Customer order will receive a rebate based on the Tier achieved.

¹⁰ See Securities Exchange Act Release No. 88993 (June 2, 2020), 85 FR 35145 (June 8, 2020) (SR-EMERALD-2020-05) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 510, Minimum Price Variations and Minimum Trading Increments, To Conform the Rule to Section 3.1 of the Plan for the Purpose of Developing and Implementing Procedures Designed To Facilitate the Listing and Trading of Standardized Options) (the “Penny Program”).

IWM) for executed Priority Customer Origin orders in Tiers 1, 2 and 3 per the rate table. The Exchange also provides a higher Simple Maker rebate of (\$0.45) per contract for options transactions in Penny Classes for SPY, QQQ and IWM, which is noted by the symbol “∇” following the tables of rebates and fees in Section 1)a)i) of the Fee Schedule.

The Exchange now proposes to amend symbol “∇” to modify the Simple Maker rebate for all options in Penny Classes for executed Priority Customer Origin orders in Tiers 1, 2 and 3 depending on whether the contra is an Affiliated Market Maker.¹¹ In particular, the Exchange proposes to provide a lower Simple Maker rebate of (\$0.37) per contract for options in all Penny Classes for executed Priority Customer Origin orders in Tiers 1, 2 and 3 when the contra is an Affiliated Market Maker. To show the difference in rebates depending on whether the contra is an Affiliated Market Maker, the Exchange proposes to amend the text in symbol “∇” to now read as follows: “The Simple Maker rebate in SPY, QQQ and IWM is (\$0.45) for Priority Customer Origin in Tiers 1, 2 and 3 when the contra is not an Affiliated Market Maker. The Simple Maker rebate in all Penny Classes is (\$0.37) for Priority Customer Origin in Tiers 1, 2 and 3 when the contra is an Affiliated Market Maker.” In summary, with the proposed changes, Priority Customer Origin orders in Tiers 1, 2 and 3 will receive a) the current (\$0.43) per contract rebate for most Penny Classes (excluding SPY, QQQ, and IWM classes) when the contra is not an Affiliated Market Maker; b) will continue to receive the current (\$0.45) per contract rebate for SPY, QQQ, and IWM classes when the contra is not an affiliated Market Maker; and c) will receive the (\$0.37) per contract rebate in all Penny Classes when the contra is an affiliated Market Maker.

¹¹ The term “Market Maker” refers to “Lead Market Maker” (“LMM”), “Primary Lead Market Maker” (“PLMM”) and “Registered Market Maker” (“RMM”), collectively. See the Definitions Section of the Fee Schedule and Exchange Rule 100.

Next, the Exchange proposes to amend Section 1)a)i) of the Fee Schedule to amend the Simple Maker rebate in Tier 4 for options transactions in Penny Classes for executed Priority Customer Origin orders. Currently, the Exchange provides a Simple Maker rebate of (\$0.53) for executed Priority Customer Origin orders in Tier 4 in options in Penny Classes if the contra is not an Affiliated Market Maker. If the contra is an Affiliated Market Maker, the Exchange provides a lower Simple Maker rebate of (\$0.43) for executed Priority Customer Origin orders in Tier 4 in options in Penny Classes.¹² Both the lower Simple Maker rebate of (\$0.43) and the rate table rebate of (\$0.53) depending on whether the contra is or is not an Affiliated Market Maker for executed Priority Customer Origin orders in Tier 4 in Penny Classes is denoted by the symbol “□” following the table of fees and rebates in Section 1)a)i) of the Fee Schedule.

The Exchange now proposes to lower the Simple Maker rebate in Tier 4 for options transactions in Penny Classes for executed Priority Customer orders when the contra is an Affiliated Market Maker. Specifically, the Exchange proposes to lower the Simple Maker rebate for executed Priority Customer orders in options in Penny Classes in Tier 4 from (\$0.43) to (\$0.37) when the contra is an Affiliated Market Maker. To be clear, executed Priority Customer Origin order in options in Penny Classes in Tier 4 will continue to receive the current (\$0.53) per contract rebate when the contra is not an Affiliated Market Maker. The proposed change would be reflected in current footnote “□” for Penny Classes. Accordingly, the Exchange proposes to update footnote “□” to now read: “This Maker rebate is for executed Priority Customer Simple

¹² See Fee Schedule, Section 1)a)i), note “□”. See Securities Exchange Act Release Nos. 94406 (March 14, 2022), 87 FR 15460 (March 18, 2022) (SR-EMERALD-2022-10) (lowering Simple Maker rebate in Tier 4 for options transactions in Penny Classes for executed Priority Customer orders when the contra is an Affiliated Market Maker from (\$0.49) to (\$0.43) and 89927 (September 21, 2020), 85 FR 60498 (September 25, 2020) (SR-EMERALD-2020-07) (establishing lower Priority Customer Tier 4 Simple Maker rebates in Penny Classes when the contra is an Affiliated Market Maker).

Orders when the contra is not an Affiliated Market Maker. When the contra is an Affiliated Market Maker, this Maker rebate for executed Priority Customer Simple Orders will be (\$0.37).”

The purpose of adjusting the specified Simple Maker rebate is for business and competitive reasons. In order to attract order flow, the Exchange initially set its Maker rebates and Taker fees so that they were meaningfully higher/lower than other options exchanges that operate comparable maker/taker pricing models.¹³ The Exchange now believes that it is appropriate to further adjust these specified Maker rebates so that they are more in line with other exchanges, but will still remain highly competitive such that they should enable the Exchange to continue to attract order flow and maintain market share.¹⁴

Implementation

The proposed changes are immediately effective.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act¹⁵ in general, and furthers the objectives of Section 6(b)(4) of the Act,¹⁶ in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange members and issuers and other persons using its facilities, and 6(b)(5) of the Act,¹⁷ in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable

¹³ See Securities Exchange Act Release No. 85393 (March 21, 2019), 84 FR 11599 (March 27, 2019) (SR-EMERALD-2019-15).

¹⁴ See Cboe BZX Options Exchange Fee Schedule, under “Transaction Fees” (providing Customer rebates for Penny Program Securities ranging from \$0.25 to \$0.53); see also Nasdaq Stock Market, Options 7, Pricing Schedule, Section 2 Nasdaq Options Market – Fees and Rebates, note 2 (providing lower rates when the Participant is both the buyer and seller).

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(4).

¹⁷ 15 U.S.C. 78f(b)(1) and (b)(5).

principles of trade, foster cooperation and coordination with persons engaged in facilitating transactions in securities, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest.

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”¹⁸

There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has a market share of more than approximately 13-14% of the equity options market.¹⁹ Therefore, no exchange possesses significant pricing power. More specifically, as of May 17, 2022, the Exchange had a market share of approximately 3.68% of executed volume of multiply-listed equity options for the month of May 2022.²⁰

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can discontinue or reduce use of certain categories of products and services, terminate an existing membership or determine to not become a new member, and/or shift order flow, in response to transaction fee changes. For example, on February 28, 2019, the Exchange’s affiliate, MIAX PEARL, LLC (“MIAX Pearl”), filed with the

¹⁸ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

¹⁹ See “The Market at a Glance,” (last visited May 17, 2022), available at <https://www.miaxoptions.com/>.

²⁰ See id.

Commission a proposal to increase Taker fees in certain Tiers for options transactions in certain Penny classes for Priority Customers and decrease Maker rebates in certain Tiers for options transactions in Penny classes for Priority Customers (which fee was to be effective March 1, 2019).²¹ MIA X Pearl experienced a decrease in total market share for the month of March 2019, after the proposal went into effect. Accordingly, the Exchange believes that the MIA X Pearl March 1, 2019 fee change, to increase certain transaction fees and decrease certain transaction rebates, may have contributed to the decrease in MIA X Pearl's market share and, as such, the Exchange believes competitive forces constrain the Exchange's, and other options exchanges, ability to set transaction fees and market participants can shift order flow based on fee changes instituted by the exchanges.

The Exchange believes its proposal to amend the Simple Maker rebates for options transactions in Penny Classes for Priority Customers is reasonable, equitable and not unfairly discriminatory because all similarly situated market participants in the same Origin type are subject to the same tiered Maker rebates and Taker fees. The Exchange believes it is equitable and not unfairly discriminatory to reduce the Simple Maker rebates for Priority Customer orders in Penny Classes when the contra is an Affiliated Market Maker for business and competitive reasons because the Exchange initially set its Simple Maker rebates for such orders higher than certain other options exchanges that operate comparable maker/taker pricing models.²² The Exchange now believes that it is appropriate to further decrease the specified Simple Maker rebates so that they are more in line with other exchanges, but will remain highly competitive

²¹ See Securities Exchange Act Release No. 85304 (March 13, 2019), 84 FR 10144 (March 19, 2019) (SR-PEARL-2019-07).

²² See supra note 13.

such that they should enable the Exchange to continue to attract order flow and maintain market share.²³

The Exchange believes that it is equitable and not unfairly discriminatory to continue to provide higher rebates for Priority Customer orders (even with the proposed changes) than to orders from origin types that are not Priority Customer. A Priority Customer is by definition not a broker or dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).²⁴ This limitation does not apply to participants on the Exchange whose behavior is substantially similar to that of market professionals, including orders from Non-MIAX Emerald Market Makers, Firm Proprietary/Broker-Dealer Origins, and Non-Priority Customers, who will generally submit a higher number of orders (many of which do not result in executions) than Priority Customers. Furthermore, the Exchange believes that even with the proposed changes, the rebates for Priority Customers will continue to encourage Members to send Priority Customer orders to the Exchange, which benefits all Exchange participants by providing more trading opportunities and tighter spreads.

The Exchange believes it is reasonable and equitable to reduce the Simple Maker rebates for Priority Customer orders in Penny Classes when the contra is an Affiliated Market Maker (versus when the contra is not an Affiliated Market Maker) because the Exchange already offers certain potential fee benefits to Members and their Affiliates from their aggregated volume. For example, pursuant to Section 1)a)ii) of the Fee Schedule, the Tier applied for a Member and its Affiliates' Priority Customer Origin is solely determined by Method 3 (Priority Customer Maker volume). However, the Market Maker Origin receives the highest Tier based on any of the three

²³ See supra note 14.

²⁴ See supra note 3.

application methods, including based on Tier achieved by their Affiliated Priority Customer Maker order flow. Thus, for example, if a Market Maker and its Affiliates naturally achieved Tier 1 from Market Maker Volume, the Exchange will also look at their Priority Customer order flow and if that Priority Customer order flow achieved higher Tiers (i.e., Tier 4), the Market Maker and its Affiliates will receive the benefit of the Tier 4 rates based on their Priority Customer order flow. The Exchange also believes it is equitable and not unfairly discriminatory to continue to provide different rebates depending on whether the contra is or is not an Affiliated Market Maker for executed Priority Customer Origin orders because competing exchanges also provide different rates depending on whether the executing buyer and seller are affiliated.²⁵ Further, the Exchange's affiliate, Miami International Securities Exchange, LLC ("MIAX"), provides a similar pricing structure for certain complex order transactions for MIAX Members and their Affiliates that aggregate their order flow.²⁶ Accordingly, the Exchange believes it is reasonable, equitable, and not unfairly discriminatory to provide a lower rebate for certain Priority Customer Origin orders when the executing buyer and seller are the same Member or Affiliates.

Furthermore, the proposed decrease to the Simple Maker rebates for Priority Customers when the contra is an Affiliated Market Maker promotes just and equitable principles of trade, fosters cooperation and coordination with persons engaged in facilitating transactions in securities, and protects investors and the public interest, because even with the decrease, the Exchange's proposed Simple Maker rebates for such orders still remain highly competitive with

²⁵ See, e.g., Nasdaq Stock Market, Options 7, Pricing Schedule, Section 2 Nasdaq Options Market – Fees and Rebates, note 2 (providing lower rates when the Participant is both the buyer and seller).

²⁶ See MIAX Fee Schedule, Section 1)a)iii), notes "◆" and "■".

certain other options exchanges offering comparable pricing models, and should enable the Exchange to continue to attract order flow and maintain market share.²⁷ The Exchange believes that the amount of such rebates, with the proposed decrease, will continue to encourage those market participants to send Priority Customer orders to the Exchange.

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

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

Intra-Market Competition

The Exchange believes that the proposed changes to the specified Simple Maker rebates for the applicable market participants should continue to encourage the provision of liquidity that enhances the quality of the Exchange's market and increases the number of trading opportunities on the Exchange for all participants who will be able to compete for such opportunities. The proposed rule change should enable the Exchange to continue to attract and compete for Priority Customer order flow with other exchanges. The Exchange believes that even with the proposed changes, the rebates for Priority Customers will continue to encourage Members to send Priority Customer orders to the Exchange, which benefits all Exchange participants by providing more trading opportunities and tighter spreads. However, this competition does not create an undue burden on competition but rather offers all market participants the opportunity to receive the benefit of competitive pricing.

The Exchange believes that the pricing structure to provide different rebates depending on whether the contra is or is not an Affiliated Market Maker for executed Priority Customer Origin orders will not impose any undue burden on intra-market competition because the

²⁷ See supra note 14.

different rates apply equally to all Members that aggregate their order flow on the Exchange. Further, this pricing structure is not new or novel and has been in place at the Exchange, its affiliate, MIAX, and competing exchanges for years.²⁸

Inter-Market Competition

The Exchange operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has a market share of more than approximately 13-14% of the equity options market.²⁹ Therefore, no exchange possesses significant pricing power. More specifically, as of May 17, 2022, the Exchange had a market share of approximately 3.68% of executed volume of multiply-listed equity options for the month of May 2022.³⁰ Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity options order flow. In such an environment, the Exchange must continually adjust its transaction and non-transaction fees to remain competitive with other exchanges and to attract order flow. The Exchange believes that the proposed rule changes reflect this competitive environment because it modifies the Exchange's rebates in a manner that will allow the Exchange to remain competitive.

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.

²⁸ See supra notes 12, 25 and 26.

²⁹ See supra note 19.

³⁰ See id.

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,³¹ and Rule 19b-4(f)(2)³² thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>);

or

- Send an e-mail [to rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-EMERALD-2022-21 on the subject line.

Paper comments:

- Send paper comments in triplicate to Vanessa Countryman, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-EMERALD-2022-21. This file number should be included on the subject line if e-mail is used. To help the Commission process and

³¹ 15 U.S.C. 78s(b)(3)(A)(ii).

³² 17 CFR 240.19b-4(f)(2).

review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-EMERALD-2022-21 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.³³

Vanessa Countryman
Secretary

³³ 17 CFR 200.30-3(a)(12).

Exhibit 5

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

MIAX Emerald Options Exchange Fee Schedule

* * * * *

1) Transaction Fees

a) Exchange Rebates/Fees

i) Transaction Fees

Tiers and their application are defined in Tier section 1)a)ii)

Members and Their Affiliates In Penny Classes Simple/Complex/PRIME/cPRIME										
Origin	Tier	Simple		Complex [#]			Per Contract Surcharge for Trading Against a Priority Customer Complex Order [~]	PRIME/cPRIME ^o		
		Maker	Taker [^]	Maker (Contra Origins ex Priority Customer)	Maker (Contra Priority Customer Origin)	Taker		Agency	Contra	Responder
Market Maker	1	(\$0.30)	\$0.50	\$0.10	\$0.47	\$0.50	\$0.12	\$0.05	\$0.05	\$0.05
	2	(\$0.33)	\$0.50	\$0.10	\$0.47	\$0.50	\$0.12	\$0.05	\$0.05	\$0.05
	3	(\$0.35)	\$0.50	\$0.10	\$0.47	\$0.50	\$0.12	\$0.05	\$0.05	\$0.05
	4	(\$0.45)	\$0.50	\$0.10	\$0.47	\$0.50	\$0.12	\$0.05	\$0.05	\$0.05
Non-MIAX Emerald Market Maker	1	(\$0.25)	\$0.50	\$0.20	\$0.50	\$0.50	\$0.12	\$0.05	\$0.05	\$0.05
	2	(\$0.25)	\$0.50	\$0.20	\$0.50	\$0.50	\$0.12	\$0.05	\$0.05	\$0.05
	3	(\$0.25)	\$0.50	\$0.20	\$0.50	\$0.50	\$0.12	\$0.05	\$0.05	\$0.05
	4	(\$0.25)	\$0.50	\$0.20	\$0.50	\$0.50	\$0.12	\$0.05	\$0.05	\$0.05
Firm Proprietary/ Broker-Dealer	1	(\$0.25)	\$0.50	\$0.20	\$0.50	\$0.50	\$0.12	\$0.05	\$0.05	\$0.05
	2	(\$0.25)	\$0.50	\$0.20	\$0.50	\$0.50	\$0.12	\$0.05	\$0.05	\$0.05
	3	(\$0.25)	\$0.50	\$0.20	\$0.50	\$0.50	\$0.12	\$0.05	\$0.05	\$0.05
	4	(\$0.25)	\$0.50	\$0.20	\$0.50	\$0.50	\$0.12	\$0.05	\$0.05	\$0.05
Non-Priority Customer	1	(\$0.25)	\$0.50	\$0.20	\$0.50	\$0.50	\$0.12	\$0.05	\$0.05	\$0.05
	2	(\$0.25)	\$0.50	\$0.20	\$0.50	\$0.50	\$0.12	\$0.05	\$0.05	\$0.05
	3	(\$0.25)	\$0.50	\$0.20	\$0.50	\$0.50	\$0.12	\$0.05	\$0.05	\$0.05
	4	(\$0.25)	\$0.50	\$0.20	\$0.50	\$0.50	\$0.12	\$0.05	\$0.05	\$0.05
Priority Customer*	1	(\$0.43) [∇]	\$0.50	(\$0.25)	(\$0.00)	(\$0.25)	\$0.00	\$0.00	\$0.05	\$0.05
	2	(\$0.43) [∇]	\$0.50	(\$0.40)	(\$0.00)	(\$0.40)	\$0.00	\$0.00	\$0.05	\$0.05

	3	(\$0.43) [∇]	\$0.50	(\$0.45)	(\$0.00)	(\$0.45)	\$0.00	\$0.00	\$0.05	\$0.05
	4	(\$0.53) [□]	\$0.50	(\$0.50)	(\$0.00)	(\$0.50)	\$0.00	\$0.00	\$0.05	\$0.05

* * * * *

^ No change.

* No change.

~ No change.

No change.

◇ No change.

∇ The Simple Maker rebate in SPY, QQQ and IWM is (\$0.45) for Priority Customer Origin in Tiers 1, 2 and 3 when the contra is not an Affiliated Market Maker. The Simple Maker rebate in all Penny Classes is (\$0.37) for Priority Customer Origin in Tiers 1, 2 and 3 when the contra is an Affiliated Market Maker.

□ This Maker rebate is for executed Priority Customer Simple Orders when the contra is not an Affiliated Market Maker. When the contra is an Affiliated Market Maker, this Maker rebate for executed Priority Customer Simple Orders will be [(\$0.43)](\$0.37).

■ No change.

* * * * *