

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-NYSE-2020-29, and should be submitted on or before April 30, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

**J. Matthew DeLesDernier,**  
Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-88560; File No. SR-EMERALD-2020-04]

### Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Fee Schedule

April 3, 2020.

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 March 31, 2020, 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 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 [sic] 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 Section (1)(a)(i) of the Fee Schedule to: (i) Decrease Simple Maker (as defined below) rebates in certain Tiers for options transactions in Penny classes (as defined below) (including SPY, QQQ, and IWM options classes) for Priority Customers;<sup>3</sup> and (ii) increase Simple Taker (as defined below) fees in certain Tiers for options transactions in Penny classes and non-Penny classes for Priority Customers, Market Makers,<sup>4</sup> and Non-MIAX Emerald Market Makers, Firms, Broker-Dealers, and Non-Priority Customers.

###### Background

The Exchange currently assesses transaction rebates and fees to all market participants which are based upon a threshold tier structure ("Tier")

<sup>3</sup> "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.

<sup>4</sup> "Market Maker" means a Member registered with the Exchange for the purpose of making markets in options contracts traded on the Exchange. See the Definitions Section of the Fee Schedule and Exchange Rule 100.

that is applicable to transaction fees. 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 Member<sup>5</sup> shall apply to all Origin types by the Member. The monthly volume thresholds for each method, 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 Contracts,<sup>6</sup> (as the numerator) expressed as a percentage of (divided by) Customer Total Consolidated Volume ("CTCV") (as the denominator). CTCV means Customer Total Consolidated Volume 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"<sup>7</sup> (solely in the option classes of the affected Matching Engine).<sup>8</sup> 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").<sup>9</sup> Members are

<sup>5</sup> "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.

<sup>6</sup> "Excluded Contracts" means any contracts routed to an away market for execution. See the Definitions Section of the Fee Schedule.

<sup>7</sup> 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.

<sup>8</sup> A "Matching Engine" is a part of the MIAX Emerald electronic system that processes options orders and trades on a symbol-by-symbol basis. Some Matching Engines will process option classes with multiple root symbols, and other Matching Engines may be dedicated to one single option root symbol (for example, options on SPY may be processed by one single Matching Engine that is dedicated only to SPY). A particular root symbol may only be assigned to a single designated Matching Engine. A particular root symbol may not be assigned to multiple Matching Engines. See the Definitions Section of the Fee Schedule.

<sup>9</sup> For a Priority Customer complex order taking liquidity in both a Penny class and non-Penny class against Origins other than Priority Customer, the

<sup>18</sup> 17 CFR 200.30-3(a)(12), (59).

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

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

also assessed lower transaction fees and smaller rebates for order executions in standard option classes in the Penny Pilot Program <sup>10</sup> (“Penny classes”) than for order executions in standard option

classes which are not in the Penny Pilot Program (“non-Penny classes”), for which Members will be assessed a higher transaction fees and larger rebates.

Currently, transaction rebates and fees for Penny and Non-Penny classes are assessed according to the following tables:

MEMBERS AND THEIR AFFILIATES IN PENNY CLASSES SIMPLE/COMPLEX/PRIME/CPRIME

Origin	Tier	Simple		Complex #			PRIME/cPRIME◊		
		Maker	Taker ^	Maker (contra origins ex priority customer)	Maker (contra priority customer origin)	Taker	Agency	Contra	Responder
Market Maker .....	1	(\$0.35)	\$0.50	\$0.10	\$0.47	\$0.50	\$0.05	\$0.05	\$0.05
	2	(0.35)	0.50	0.10	0.47	0.50	0.05	0.05	0.05
	3	(0.35)	0.50	0.10	0.47	0.50	0.05	0.05	0.05
	4	(0.45)	0.48	0.10	0.47	0.50	0.05	0.05	0.05
Non-MIAX Emerald Market Maker .....	1	(0.25)	0.50	0.20	0.50	0.50	0.05	0.05	0.05
	2	(0.25)	0.50	0.20	0.50	0.50	0.05	0.05	0.05
	3	(0.25)	0.50	0.20	0.50	0.50	0.05	0.05	0.05
	4	(0.25)	0.48	0.20	0.50	0.50	0.05	0.05	0.05
Firm Proprietary/Broker-Dealer ..	1	(0.25)	0.50	0.20	0.50	0.50	0.05	0.05	0.05
	2	(0.25)	0.50	0.20	0.50	0.50	0.05	0.05	0.05
	3	(0.25)	0.50	0.20	0.50	0.50	0.05	0.05	0.05
	4	(0.25)	0.49	0.20	0.50	0.50	0.05	0.05	0.05
Non-Priority Customer .....	1	(0.25)	0.50	0.20	0.50	0.50	0.05	0.05	0.05
	2	(0.25)	0.50	0.20	0.50	0.50	0.05	0.05	0.05
	3	(0.25)	0.50	0.20	0.50	0.50	0.05	0.05	0.05
	4	(0.25)	0.49	0.20	0.50	0.50	0.05	0.05	0.05
Priority Customer * .....	1	▽(0.48)	0.47	(0.25)	(0.25)	(0.25)	0.00	0.05	0.05
	2	▽(0.48)	0.47	(0.40)	(0.40)	(0.40)	0.00	0.05	0.05
	3	▽(0.48)	0.47	(0.45)	(0.45)	(0.45)	0.00	0.05	0.05
	4	(0.53)	0.45	(0.50)	(0.50)	(0.50)	0.00	0.05	0.05

MEMBERS AND THEIR AFFILIATES IN NON-PENNY CLASSES SIMPLE/COMPLEX/PRIME/CPRIME

Origin	Tier	Simple		Complex #			PRIME/cPRIME◊		
		Maker	Taker ^	Maker (contra origins ex priority customer)	Maker (contra priority customer origin)	Taker ~	Agency	Contra	Responder
Market Maker .....	1	(\$0.45)	\$0.99	\$0.20	\$0.86	\$0.88	\$0.05	\$0.05	\$0.05
	2	(0.45)	0.99	0.20	0.86	0.88	0.05	0.05	0.05
	3	(0.45)	0.99	0.20	0.86	0.86	0.05	0.05	0.05
	4	(0.75)	0.94	0.20	0.86	0.86	0.05	0.05	0.05
Non-MIAX Emerald Market Maker .....	1	(0.25)	0.99	0.20	0.88	0.88	0.05	0.05	0.05
	2	(0.25)	0.99	0.20	0.88	0.88	0.05	0.05	0.05
	3	(0.25)	0.99	0.20	0.88	0.88	0.05	0.05	0.05
	4	(0.25)	0.94	0.20	0.88	0.88	0.05	0.05	0.05
Firm Proprietary/Broker-Dealer ..	1	(0.25)	0.99	0.20	0.88	0.88	0.05	0.05	0.05
	2	(0.25)	0.99	0.20	0.88	0.88	0.05	0.05	0.05
	3	(0.25)	0.99	0.20	0.88	0.88	0.05	0.05	0.05
	4	(0.25)	0.94	0.20	0.88	0.88	0.05	0.05	0.05
Non-Priority Customer .....	1	(0.25)	0.99	0.20	0.88	0.88	0.05	0.05	0.05
	2	(0.25)	0.99	0.20	0.88	0.88	0.05	0.05	0.05
	3	(0.25)	0.99	0.20	0.88	0.88	0.05	0.05	0.05
	4	(0.25)	0.94	0.20	0.88	0.88	0.05	0.05	0.05
Priority Customer * .....	1	(0.85)	0.85	(0.40)	(0.40)	(0.40)	0.00	0.05	0.05
	2	(0.85)	0.85	(0.60)	(0.60)	(0.60)	0.00	0.05	0.05
	3	(0.85)	0.85	(0.70)	(0.70)	(0.75)	0.00	0.05	0.05
	4	(1.05)	0.82	(0.87)	(0.87)	(0.85)	0.00	0.05	0.05

^ Contra to Priority Customer Simple Orders, Origins ex Priority Customer Simple Orders will be charged \$0.50 and Priority Customer Simple Orders will be charged \$0.49 in Penny classes, and Origins ex Priority Customer Simple Orders will be charged \$1.10 and Priority Customer Simple Orders will be charged \$0.85 in Non-Penny classes.

Priority Customer order will receive a rebate based on the Tier achieved.

<sup>10</sup> See Securities Exchange Act Release No. 85225 (March 1, 2019), 84 FR 68353 (March 7, 2019) (SR-EMERALD-2019-06).

\* Priority Customer Complex Orders contra to Priority Customer Complex Orders are neither charged nor rebated. Priority Customer Complex Orders that leg into the Simple book are neither charged nor rebated.

~ A \$0.05 Complex surcharge for Origins ex Priority Customer for Complex Orders that take liquidity from the Complex Order Book in Non-Penny classes.

# For orders in a Complex Auction, Priority Customer Complex Orders will receive the Complex Taker rebate based on the tier achieved when contra to an Origin that is not a Priority Customer. Origins that are not a Priority Customer will be charged the applicable Maker fee depending on the contra, based on the tier achieved.

◇ For PRIME and cPRIME, the per contract rebate or fee for the preexisting contra-side interest that trades with the Agency side will be waived. PRIME/cPRIME Responder side interest that trades with unrelated Agency side interest trades as Taker will be subject to Simple or Complex rates, as applicable.

▽ Simple Maker rebate in SPY, QQQ and IWM is (\$0.50) for Priority Customer Origin in Tiers 1, 2 and 3.

Notes Accompanying Tables Above

During the Opening Rotation and the ABBO uncrossing, the per contract rebate or fee will be waived for all Origins.

Simple Maker Rebates for Priority Customers

First, the Exchange proposes to decrease the Simple Maker rebates in certain Tiers for options transactions in Penny classes (including SPY, QQQ, and IWM options classes) for Priority Customers. Specifically, the Exchange proposes to decrease the Simple Maker rebates for Priority Customer orders in options in certain Penny classes (excluding SPY, QQQ, and IWM) in Tier 1 from (0.48) to (0.43), in Tier 2 from (0.48) to (0.43), and in Tier 3 from (0.48) to (0.43). The Exchange next proposes to amend footnote “▽” in Section (1)(a)(i) of the Fee Schedule to decrease the Simple Maker rebate for Priority Customer orders in SPY, QQQ and IWM options classes in Tiers 1, 2 and 3 from (0.50) to (0.45).

Simple Taker Fees for Priority Customers, Market Makers, Non-MIAX Emerald Market Makers, Firm, Broker-Dealers, and Non-Priority Customers in Penny Classes

The Exchange next proposes to increase the Simple Taker fees in certain Tiers for options transactions in Penny classes for Priority Customers, Market Makers, Non-MIAX Emerald Market Makers, Firms, Broker-Dealers, and Non-Priority Customers. Specifically, the Exchange proposes to increase the Simple Taker fees for Market Maker orders in options in all Penny classes in

Tier 4 from 0.48 to 0.50. The Exchange next proposes to increase the Simple Taker fees for Non-MIAX Emerald Market Maker orders in options in all Penny classes in Tier 4 from 0.48 to 0.50. The Exchange next proposes to increase the Simple Taker fees for Firm Proprietary and Broker-Dealer orders in options in all Penny classes in Tier 4 from 0.49 to 0.50. The Exchange next proposes to increase the Simple Taker fees for Non-Priority Customer orders in options in all Penny classes in Tier 4 from 0.49 to 0.50. The Exchange next proposes to increase the Simple Taker fees for Priority Customer orders contra Origins ex Priority Customer in options in all Penny classes in Tiers 1–3 from 0.47 to 0.50, and in Tier 4 from 0.45 to 0.50. The Exchange next proposes to amend footnote “^” in Section (1)(a)(i) of the Fee Schedule to increase the Taker fees for Simple Priority Customer orders contra Priority Customer in options in Penny classes from 0.49 to 0.50.

Simple Taker Fees for Priority Customers, Market Makers, Non-MIAX Emerald Market Makers, Firms, Broker-Dealers, and Non-Priority Customers in Non-Penny Classes

The Exchange next proposes to increase the Simple Taker fees in certain Tiers for options transactions in non-Penny classes for Priority Customers, Market Makers, Non-MIAX Emerald Market Makers, Firms, Broker-Dealers and Non-Priority Customers. Specifically, the Exchange proposes to increase the Simple Taker fees for Market Maker orders in options in non-Penny classes in Tiers 1–3 from 0.99 to

1.05, and in Tier 4 from 0.94 to 1.05. The Exchange next proposes to increase the Simple Taker fees for Non-MIAX Emerald Market Maker orders in options in non-Penny classes in Tiers 1–3 from 0.99 to 1.05, and in Tier 4 from 0.94 to 1.05. The Exchange next proposes to increase the Simple Taker fees for Firm Proprietary and Broker-Dealer orders in options in non-Penny classes in Tiers 1–3 from 0.99 to 1.05, and in Tier 4 from 0.94 to 1.05. The Exchange next proposes to increase the Simple Taker fees for Non-Priority Customer orders in options in non-Penny classes in Tiers 1–3 from 0.99 to 1.05, and in Tier 4 from 0.94 to 1.05. Finally, the Exchange proposes to increase the Simple Taker fees for Priority Customer orders contra Origins ex Priority Customer in options in non-Penny classes in Tier 4 from 0.82 to 0.85.

The purpose of adjusting the specified Simple Taker fees and the specified Simple Maker rebates 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.<sup>11</sup> The Exchange now believes that it is appropriate to further adjust these specified Maker rebates and Taker fees 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.<sup>12</sup>

With all the proposed changes, Section (1)(a)(i) of the Fee Schedule shall be the following:

MEMBERS AND THEIR AFFILIATES IN PENNY CLASSES SIMPLE/COMPLEX/PRIME/CPRIME

Origin	Tier	Simple		Complex #			PRIME/cPRIME ◇		
		Maker	Taker ^	Maker (contra origins ex priority customer)	Maker (contra priority customer origin)	Taker	Agency	Contra	Responder
Market Maker .....	1	(\$0.35)	\$0.50	\$0.10	\$0.47	\$0.50	\$0.05	\$0.05	\$0.05

<sup>11</sup> See Securities Exchange Act Release No. 85393 (March 21, 2019), 84 FR 11599 (March 27, 2019) (SR-EMERALD-2019-15).

<sup>12</sup> See Cboe BZX Options Exchange Fee Schedule, under “Transaction Fees.”

MEMBERS AND THEIR AFFILIATES IN PENNY CLASSES SIMPLE/COMPLEX/PRIME/CPRIME—Continued

Origin	Tier	Simple		Complex #			PRIME/cPRIME ◊		
		Maker	Taker ^	Maker (contra origins ex priority customer)	Maker (contra priority customer origin)	Taker	Agency	Contra	Responder
Non-MIAX Emerald Market Maker .....	2	(0.35)	0.50	0.10	0.47	0.50	0.05	0.05	0.05
	3	(0.35)	0.50	0.10	0.47	0.50	0.05	0.05	0.05
	4	(0.45)	0.50	0.10	0.47	0.50	0.05	0.05	0.05
	1	(0.25)	0.50	0.20	0.50	0.50	0.05	0.05	0.05
Firm Proprietary/Broker-Dealer ..	2	(0.25)	0.50	0.20	0.50	0.50	0.05	0.05	0.05
	3	(0.25)	0.50	0.20	0.50	0.50	0.05	0.05	0.05
	4	(0.25)	0.50	0.20	0.50	0.50	0.05	0.05	0.05
	1	(0.25)	0.50	0.20	0.50	0.50	0.05	0.05	0.05
Non-Priority Customer .....	2	(0.25)	0.50	0.20	0.50	0.50	0.05	0.05	0.05
	3	(0.25)	0.50	0.20	0.50	0.50	0.05	0.05	0.05
	4	(0.25)	0.50	0.20	0.50	0.50	0.05	0.05	0.05
	1	(0.25)	0.50	0.20	0.50	0.50	0.05	0.05	0.05
Priority Customer * .....	2	(0.25)	0.50	0.20	0.50	0.50	0.05	0.05	0.05
	3	(0.25)	0.50	0.20	0.50	0.50	0.05	0.05	0.05
	4	(0.25)	0.50	0.20	0.50	0.50	0.05	0.05	0.05
	1	▽ (0.43)	0.50	(0.25)	(0.25)	(0.25)	0.00	0.05	0.05
	2	▽ (0.43)	0.50	(0.40)	(0.40)	(0.40)	0.00	0.05	0.05
	3	▽ (0.43)	0.50	(0.45)	(0.45)	(0.45)	0.00	0.05	0.05
	4	(0.53)	0.50	(0.50)	(0.50)	(0.50)	0.00	0.05	0.05

MEMBERS AND THEIR AFFILIATES IN NON-PENNY CLASSES SIMPLE/COMPLEX/PRIME/CPRIME

Origin	Tier	Simple		Complex #			PRIME/cPRIME ◊		
		Maker	Taker ^	Maker (contra origins ex priority customer)	Maker (contra priority customer origin)	Taker ~	Agency	Contra	Responder
Market Maker .....	1	(0.45)	1.05	0.20	0.86	0.88	0.05	0.05	0.05
	2	(0.45)	1.05	0.20	0.86	0.88	0.05	0.05	0.05
	3	(0.45)	1.05	0.20	0.86	0.86	0.05	0.05	0.05
	4	(0.75)	1.05	0.20	0.86	0.86	0.05	0.05	0.05
Non-MIAX Emerald Market Maker .....	1	(0.25)	1.05	0.20	0.88	0.88	0.05	0.05	0.05
	2	(0.25)	1.05	0.20	0.88	0.88	0.05	0.05	0.05
	3	(0.25)	1.05	0.20	0.88	0.88	0.05	0.05	0.05
	4	(0.25)	1.05	0.20	0.88	0.88	0.05	0.05	0.05
Firm Proprietary/Broker-Dealer ..	1	(0.25)	1.05	0.20	0.88	0.88	0.05	0.05	0.05
	2	(0.25)	1.05	0.20	0.88	0.88	0.05	0.05	0.05
	3	(0.25)	1.05	0.20	0.88	0.88	0.05	0.05	0.05
	4	(0.25)	1.05	0.20	0.88	0.88	0.05	0.05	0.05
Non-Priority Customer .....	1	(0.25)	1.05	0.20	0.88	0.88	0.05	0.05	0.05
	2	(0.25)	1.05	0.20	0.88	0.88	0.05	0.05	0.05
	3	(0.25)	1.05	0.20	0.88	0.88	0.05	0.05	0.05
	4	(0.25)	1.05	0.20	0.88	0.88	0.05	0.05	0.05
Priority Customer * .....	1	(0.85)	0.85	(0.40)	(0.40)	(0.40)	0.00	0.05	0.05
	2	(0.85)	0.85	(0.60)	(0.60)	(0.60)	0.00	0.05	0.05
	3	(0.85)	0.85	(0.70)	(0.70)	(0.75)	0.00	0.05	0.05
	4	(1.05)	0.85	(0.87)	(0.87)	(0.85)	0.00	0.05	0.05

^ Contra to Priority Customer Simple Orders, Origins ex Priority Customer Simple Orders will be charged 0.50 and Priority Customer Simple Orders will be charged 0.50 in Penny classes, and Origins ex Priority Customer Simple Orders will be charged 1.10 and Priority Customer Simple Orders will be charged 0.85 in Non-Penny classes.

\* Priority Customer Complex Orders contra to Priority Customer Complex Orders are neither charged nor rebated. Priority Customer Complex Orders that leg into the Simple book are neither charged nor rebated.

~ A 0.05 Complex surcharge for Origins ex Priority Customer for Complex Orders that take liquidity from the Complex Order Book in Non-Penny classes.

# For orders in a Complex Auction, Priority Customer Complex Orders will receive the Complex Taker rebate based on the tier achieved when contra to an Origin that is not a Priority Customer. Origins that are not a Priority Customer will be charged the applicable Maker fee depending on the contra, based on the tier achieved.

◊ For PRIME and cPRIME, the per contract rebate or fee for the preexisting contra-side interest that trades with the Agency side will be waived. PRIME/cPRIME Responder side interest that trades with unrelated Agency side interest trades as Taker will be subject to Simple or Complex rates, as applicable.

▽ Simple Maker rebate in SPY, QQQ and IWM is (0.45) for Priority Customer Origin in Tiers 1, 2 and 3.

## Notes Accompanying Tables Above

During the Opening Rotation and the ABBO uncrossing, the per contract rebate or fee will be waived for all Origins

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.”<sup>13</sup>

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 more than approximately 15% market share.<sup>14</sup> Therefore, no exchange possesses significant pricing power. More specifically, as of March 24, 2020, the Exchange had an approximately 3.42% market share of executed volume of multiply-listed equity and exchange traded fund (“ETF”) options for the month of March 2020.<sup>15</sup> 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 transactions in Penny classes for Priority Customers (which fee was to be effective March 1, 2019).<sup>16</sup> MIAx 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 MIAx PEARL March 1, 2019 fee

change, to increase certain transaction fees and decrease certain transaction rebates, may have contributed to the decrease in MIAx 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 proposed changes are scheduled to become operative April 1, 2020.

## 2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act<sup>17</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act,<sup>18</sup> 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,<sup>19</sup> 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 believes its proposal to decrease Simple Maker rebates in certain Tiers for options transactions in Penny classes for Priority Customers and increase Simple Taker fees in certain Tiers for options transactions in Penny classes and non-Penny classes for Priority Customers, Market Makers, Non-MIAx Emerald Market Makers, Firms, Broker-Dealers and Non-Priority Customers provides for the equitable allocation of reasonable dues and fees and is not unfairly discriminatory for the following reasons. The Exchange operates in a highly competitive market. 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.”<sup>20</sup> 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 more than approximately 15% of the market share of executed volume of multiply-listed equity and ETF options trades as of March 24, 2020, for the month of March 2020.<sup>21</sup> Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, as of March 24, 2020, the Exchange had an approximately 3.42% market share of executed volume of multiply-listed equity and ETF options for the month of March 2020.<sup>22</sup> The Exchange cannot predict with certainty the number of market participants that would qualify for the higher Simple Taker fees or lower Simple Maker rebates for each of the proposed changes as Members may continually shift among the different Tiers from month to month.

The Exchange believes that the ever-shifting market shares among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, in response to transaction and/or non-transaction fee changes. For example, on February 28, 2019, the Exchange’s affiliate, 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 transactions in Penny classes for Priority Customers (which fee was to be effective March 1, 2019).<sup>23</sup> MIAx 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 MIAx PEARL March 1, 2019 fee change, to increase certain transaction fees and decrease certain transaction rebates, may have contributed to the decrease in MIAx 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 decrease Simple Maker rebates in

<sup>13</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

<sup>14</sup> The Options Clearing Corporation (“OCC”) publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available here: <https://www.theocc.com/market-data/volume/default.jsp>.

<sup>15</sup> See *id.*

<sup>16</sup> See Securities Exchange Act Release No. 85304 (March 13, 2019), 84 FR 10144 (March 19, 2019) (SR-PEARL-2019-07).

<sup>17</sup> 15 U.S.C. 78f(b).

<sup>18</sup> 15 U.S.C. 78f(b)(4).

<sup>19</sup> 15 U.S.C. 78f(b)(1) and (b)(5).

<sup>20</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

<sup>21</sup> See *supra* note 14.

<sup>22</sup> See *id.*

<sup>23</sup> See *supra* note 16.

certain Tiers for options transactions in Penny classes for Priority Customers and increase Simple Taker fees in certain Tiers for options transactions in Penny classes and non-Penny classes for Priority Customers, Market Makers, Non-MIAX Emerald Market Makers, Firms, Broker-Dealers and Non-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 and access to the Exchange is offered on terms that are not unfairly discriminatory. The Exchange believes it is equitable and not unfairly discriminatory to reduce the Simple Maker rebate to Priority Customer orders in Penny classes for competitive and business 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.<sup>24</sup> The Exchange now believes that it is appropriate to further decrease those specified Simple Maker rebates so that they are more in line with other exchanges, and will still remain highly competitive such that they should enable the Exchange to continue to attract order flow and maintain market share.<sup>25</sup>

Furthermore, the proposed decreases to the Simple Maker rebates for Priority Customers 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 decreases, 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 Exchange to continue to attract order flow and maintain market share.<sup>26</sup> The Exchange believes that the amount of such fees, as proposed to be decreased, will continue to encourage those market participants to send orders to the Exchange. The Exchange further believes that it is appropriate to decrease the Simple Maker rebates for Priority Customers in SPY, QQQ and IWM options classes because these select products are generally more liquid than other options classes.

The proposed Simple Taker fee adjustments in certain specified Tiers applicable to certain orders submitted by Priority Customers, Market Makers, Non-MIAX Emerald Market Makers,

Firms, Broker-Dealers and Non-Priority Customers in Penny and non-Penny classes are reasonable, equitable and not unfairly discriminatory because all similarly situated market participants in the same Origin type are subject to the same tiered Taker fees and access to the Exchange is offered on terms that are not unfairly discriminatory. For competitive and business reasons, the Exchange initially set its Simple Taker fees for such orders generally lower than certain other options exchanges that operate comparable maker/taker pricing models.<sup>27</sup> The Exchange now believes that it is appropriate to further increase those specified Simple Taker fees so that they are more in line with other exchanges, and will still remain highly competitive such that they should enable the Exchange to continue to attract order flow and maintain market share. The Exchange believes for these reasons that increasing certain Simple Taker fees for transactions in the specified Tiers is equitable, reasonable and not unfairly discriminatory, and thus consistent with the Act.

#### *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. The Exchange believes that the proposed changes in the specified Simple Maker rebates and Simple Taker fees 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 changes should enable the Exchange to continue to attract and compete for order flow with other exchanges. 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 proposed Simple Maker rebate decreases and Simple Taker fee adjustments are intended to keep the Exchange's fees highly competitive with those of other exchanges, and to encourage liquidity and should enable the Exchange to continue to attract and compete for order flow with other exchanges. The Exchange notes that it 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. In such an environment, the Exchange must continually adjust its rebates and 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 they modify the Exchange's fees in a manner that encourages market participants to continue to provide liquidity and to send order flow to the Exchange.

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

Written comments were neither solicited nor received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>28</sup> and Rule 19b-4(f)(2)<sup>29</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:

#### *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-2020-04 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-2020-04. This file number should be included on the

<sup>24</sup> See *supra* note 11.

<sup>25</sup> See *supra* note 12.

<sup>26</sup> See *id.*

<sup>27</sup> See *supra* notes 11 and 12.

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

<sup>29</sup> 17 CFR 240.19b-4(f)(2).

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-2020-04, and should be submitted on or before April 30, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>30</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-88558; File No. SR-CboeBZX-2020-007]

### Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, To Eliminate the Requirement That an Intraday Indicative Value Be Disseminated as Set Forth Under Rule 14.11(c) for Certain Series of Index Fund Shares and Under Rule 14.11(i) for All Series of Managed Fund Shares

April 3, 2020.

#### I. Introduction

On February 14, 2020, Cboe BZX Exchange, Inc. ("Exchange" or "BZX") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to eliminate the requirements that an intraday indicative value be disseminated under Rule 14.11(c) (Index Fund Shares) for certain series of Index Fund Shares and under Rule 14.11(i) (Managed Fund Shares) for all series of Managed Fund Shares. The proposed rule change was published for comment in the **Federal Register** on February 27, 2020.<sup>3</sup> On March 18, 2020, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>4</sup> The Commission has received no comments on the proposal. This order approves the proposed rule change, as modified by Amendment No. 1.

#### II. Description of the Proposed Rule Change, as Modified by Amendment No. 1

BZX Rules 14.11(c) and 14.11(i) govern the listing and trading of Index Fund Shares and Managed Fund Shares, respectively, on the Exchange. BZX Rules 14.11(c)(3)(C), (c)(6)(A), and (c)(9)(B)(i)(e) as well as BZX Rules 14.11(i)(4)(B)(i) and (i)(4)(B)(iii)(b) require that an intraday estimate of the value of a share of each series ("IIV") be disseminated and updated at least every 15 seconds. The Exchange proposes to eliminate the requirement to disseminate an IIV for all series of

Managed Fund Shares and for each series of Index Fund Shares that publishes its "Portfolio Holdings"<sup>5</sup> on its website on a daily basis. The Exchange also proposes to make corresponding changes to the Managed Fund Shares listing standards to remove the term "Intraday Indicative Value" from the definitional section and to eliminate the provisions relating to halting trading in a series of Managed Fund Shares when there is an interruption to the dissemination of the shares' IIV.

#### III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the Act and rules and regulations thereunder applicable to a national securities exchange.<sup>6</sup> In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act,<sup>7</sup> which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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.

As discussed above, BZX proposes to eliminate the IIV dissemination requirement for all series of Managed Fund Shares, all of which are subject to a portfolio dissemination requirement,<sup>8</sup>

<sup>5</sup> The Exchange is proposing to define "Portfolio Holdings" as the holdings of a particular series of Index Fund Shares that will form the basis for the calculation of its net asset value at the end of the business day, and includes the following information, to the extent applicable: (i) Ticker symbol; (ii) CUSIP or other identifier; (iii) description of the holding; (iv) identity of the security, commodity, index, or other asset upon which the derivative is based; (v) the strike price for any options; (vi) the quantity of each security or other asset held as measured by: (a) Par value; (b) notional value; (c) number of shares; (d) number of contracts; and (e) number of units; (vii) maturity date; (viii) coupon rate; (ix) effective date; (x) market value; and (xi) percentage weighting of the holding in the portfolio. See proposed BZX Rule 14.11(c)(1)(F).

<sup>6</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> See BZX Rule 14.11(i)(4)(B)(ii)(a) (requiring that the Disclosed Portfolio for a series of Managed Fund Shares be disseminated at least once daily and be made available to all market participants at the same time; and BZX Rule 14.11(i)(4)(B)(iii)(b) (requiring that the Exchange consider suspension of trading in and commence delisting proceedings for a series of Managed Fund Shares where the

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

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

<sup>3</sup> See Securities Exchange Act Release No. 88259 (February 21, 2020), 85 FR 11419 ("Notice").

<sup>4</sup> In Amendment No. 1, the Exchange made various technical changes. Accordingly, Amendment No. 1 is not subject to notice and comment. Amendment No. 1 is available at: <https://www.sec.gov/comments/sr-cboebzx-2020-007/sr-cboebzx2020007-6993239-214728.pdf>.

<sup>30</sup> 17 CFR 200.30-3(a)(12).