

proposed change would not impose a disparate burden on competition among market participants on the Exchange. As such, the Exchange believes the proposed new pricing tier would not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed rule change places a burden on competition among participants that are not affiliated with an OTP Holder or OTP Firm with a market maker account on NYSE Arca Options because such participants can avail themselves to credits available under other Tape B pricing tiers that do not require participation on NYSE Arca Options. Additionally, the Exchange's proposal to delete the phrases "to the Book," "from the Book," and "outside the Book" from the Fee Schedule will not place any undue burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed change does not impact any fees charged or credits provided by the Exchange. All ETP Holders would continue to be subject to the same fees and credits that currently apply to them.

*Intermarket Competition.* The Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. As noted above, the Exchange's market share of intraday trading (*i.e.*, excluding auctions) is currently less than 10%. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with off-exchange venues. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange does not believe its proposed fee change can impose any burden on intermarket competition.

The Exchange believes that the proposed rule change could promote competition between the Exchange and other execution venues, including those that currently offer similar order types and comparable transaction pricing, by encouraging additional orders to be sent to the Exchange for execution.

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

No written comments were solicited or received with respect to the proposed rule change.

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

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)<sup>21</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>22</sup> thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such 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 under Section 19(b)(2)(B)<sup>23</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *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-NYSEARCA-2021-12 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-NYSEARCA-2021-12. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's

internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEARCA-2021-12 and should be submitted on or before March 16, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>24</sup>

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

[FR Doc. 2021-03547 Filed 2-22-21; 8:45 am]

BILLING CODE 8011-01-P

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91142; File No. SR-PHLX-2021-08]

#### Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 3304

February 17, 2021.

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> notice is hereby given that on February 4, 2021, Nasdaq PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the 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

<sup>21</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>22</sup> 17 CFR 240.19b-4(f)(2).

<sup>23</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>24</sup> 17 CFR 200.30-3(a)(12).

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

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

comments on the proposed rule change from interested persons.

## **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend Rule 3304 (Data Feeds Utilized) to change the primary and secondary source of quotation data of certain market centers in the list of proprietary and network processor feeds that the Exchange utilizes for the handling, routing, and execution of orders as well as regulatory compliance processes related to those functions.

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/phlx/rules>, at the principal office of the Exchange, 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 update and amend the data feeds table in Rule 3304, which sets forth on a market-by-market basis the specific proprietary and network processor feeds that the Exchange utilizes for the handling, routing, and execution of orders, and for performing the regulatory compliance processes related to each of those functions. Specifically, the table would be amended to reflect that the Exchange will receive a direct feed from MIAX PEARL, LLC ("MIAX PEARL") and MEMX LLC ("MEMX") as its primary quotation data source and CQS/UQDF will become its secondary data source for the handling, routing and execution of orders and for performing regulatory compliance processes related to each of those functions. The change to the primary sources reflects the Exchange's effort to include an additional source and the use of secondary sources in the

event the primary source is unable to provide data.

The Exchange proposes to implement the proposed rule change no later than ninety (90) days following the effective date of the proposed rule change. The Exchange notes this additional time gives the Exchange time to configure its system accordingly.

#### **2. Statutory Basis**

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>3</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>4</sup> in particular, in that it is designed 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.

The Exchange believes that the proposed rule change removes impediments to and perfects the mechanism of a free and open market because updating its data feeds table of market centers for which the exchange consumes quotation data through a direct feed will provide clarity to market participants. Additionally, it is necessary and consistent with the public interest and the protection of investors to update the Exchange's table of market centers in Rule 3304 in order to provide transparency with respect to all the direct proprietary and network processor feeds from which the Exchange obtains market data.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issue; instead, its purpose is to enhance transparency with respect to the operation of the Exchange and its use of market data feeds.

### *C. 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.

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

Because the foregoing proposed rule change does not: (i) Significantly affect

the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>5</sup> and Rule 19b-4(f)(6) thereunder.<sup>6</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

## **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

### *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-Phlx-2021-08 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-Phlx-2021-08. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the

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

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

<sup>5</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>6</sup> 15 U.S.C. 78f(b)(5).

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-Phlx-2021-08 and should be submitted on or before March 16, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

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

[FR Doc. 2021-03544 Filed 2-22-21; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91145; File No. SR-EMERALD-2021-05]

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

February 17, 2021.

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> notice is hereby given that on February 4, 2021, MIAX Emerald, LLC ("MIAX Emerald" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the 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.

<sup>7</sup> 17 CFR 200.30-3(a)(12).

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

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

### 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") to establish market data fees.

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

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

##### 1. Purpose

The Exchange proposes to amend the Fee Schedule to establish market data fees. MIAX Emerald commenced operations as a national securities exchange registered under Section 6 of the Act<sup>3</sup> on March 1, 2019.<sup>4</sup> The Exchange adopted its transaction fees and certain of its non-transaction fees in its filing SR-EMERALD-2019-15.<sup>5</sup> In that filing, the Exchange expressly waived, among others, market data fees to provide an incentive to prospective market participants to become Members<sup>6</sup> of the Exchange. At that time, the Exchange waived market data fees for the Waiver Period<sup>7</sup> and stated

<sup>3</sup> 15 U.S.C. 78f.

<sup>4</sup> See Securities Exchange Act Release No. 84891 (December 20, 2018), 83 FR 67421 (December 28, 2018) (File No. 10-233) (order approving application of MIAX Emerald, LLC for registration as a national securities exchange).

<sup>5</sup> See Securities Exchange Act Release No. 85393 (March 21, 2019), 84 FR 11599 (March 27, 2019) (SR-EMERALD-2019-15) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish the MIAX Emerald Fee Schedule).

<sup>6</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 Exchange Rule 100 and the Definitions Section of the Fee Schedule.

<sup>7</sup> "Waiver Period" means, for each applicable fee, the period of time from the initial effective date of

that it would provide notice to market participants when the Exchange intended to terminate the Waiver Period.

On September 15, 2020, the Exchange issued a Regulatory Circular which announced, among other things, that the Exchange would be ending the Waiver Period for market data fees, beginning October 1, 2020.<sup>8</sup>

On October 1, 2020, the Exchange filed its proposal to assess fees for its market data products, MIAX Emerald Top of Market ("ToM"), Administrative Information Subscriber ("AIS") feed, and MIAX Order Feed ("MOR").<sup>9</sup> On October 14, 2020, the Exchange withdrew the First Proposed Rule Change and refiled its proposal in order to provide more description regarding the difference in pricing for internal distributors and external distributors.<sup>10</sup>

On November 25, 2020, the Exchange withdrew the Second Proposed Rule Change<sup>11</sup> and refiled its proposal to assess fees for its ToM, AIS and MOR products in order to provide additional information.<sup>12</sup> On January 22, 2021, the Exchange withdrew the Third Proposed Rule Change<sup>13</sup> and refiled its proposal in order to provide a cost-based justification for its market data fees.<sup>14</sup> On February 4, 2021, the Exchange withdrew the Fourth Proposed Rule Change and refiled this proposal.

A more detailed description of the ToM, AIS and MOR products can be

the MIAX Emerald Fee Schedule until such time that the Exchange has an effective fee filing establishing the applicable fee. The Exchange will issue a Regulatory Circular announcing the establishment of an applicable fee that was subject to a Waiver Period at least fifteen (15) days prior to the termination of the Waiver Period and effective date of any such applicable fee. See the Definitions Section of the Fee Schedule.

<sup>8</sup> See MIAX Emerald Regulatory Circular 2020-41 available at [https://www.miaxoptions.com/sites/default/files/circular-files/MIAX\\_Emerald\\_RC\\_2020\\_41.pdf](https://www.miaxoptions.com/sites/default/files/circular-files/MIAX_Emerald_RC_2020_41.pdf).

<sup>9</sup> See SR-EMERALD-2020-10 (the "First Proposed Rule Change").

<sup>10</sup> See Securities Exchange Act Release No. 90274 (October 27, 2020), 85 FR 69371 (November 2, 2020) (SR-EMERALD-2020-13) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule To Establish Market Data Fees) (the "Second Proposed Rule Change").

<sup>11</sup> See Comment Letter from Joseph W. Ferraro III, SVP, Deputy General Counsel, the Exchange, dated November 20, 2020, notifying the Commission that the Exchange will withdraw the Second Proposed Rule Change.

<sup>12</sup> See Securities Exchange Act Release No. 90612 (December 9, 2020), 85 FR 81242 (December 15, 2020) (SR-EMERALD-2020-16) (the "Third Proposed Rule Change").

<sup>13</sup> See Comment Letter from Joseph W. Ferraro III, SVP, Deputy General Counsel, the Exchange, dated January 19, 2021, notifying the Commission that the Exchange will withdraw the Third Proposed Rule Change.

<sup>14</sup> See SR-EMERALD-2021-04 (the "Fourth Proposed Rule Change").