SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations: Investors Exchange LLC; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Enhance the IEX Retail Price Improvement Program for the Benefit of Retail Investors

May 26, 2021.

On April 1, 2021, the Investors Exchange LLC ("IEX") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") 1 and Rule 19b–4 thereunder,2 a proposed rule change to enhance its Retail Price Improvement Program for the benefit of retail investors. The proposed rule change was published for comment in the Federal Register on April 15, 2021.3

Section 19(b)(2) of the Act 5 provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is May 30, 2021. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change and the comments received thereon. Accordingly, pursuant to Section 19(b)(2) of the Act,6 the Commission designates July 14, 2021, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–IEX–2021–06).

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

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend its Fee Schedule To Adopt Fees for a New Data Product Known as the Liquidity Taker Event Report

May 26, 2021.

Pursuant to 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 14, 2021, 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 Exchange’s Fee Schedule ("Fee Schedule") to adopt fees for a new data product known as the Liquidity Taker Event Report.3

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 recently adopted a new data product known as the Liquidity Taker Event Report (the "Report"), which will be available for purchase to Exchange Members on a voluntary basis.4 The Exchange now proposes to adopt fees for the Report. The Report was recently approved by the Securities and Exchange Commission ("Commission") and is described under Exchange Rule 531(a).5 The Report is an optional product available to Members.

By way of background, the Report is a daily report that provides a Member (“Recipient Member”) with its liquidity response time details for executions of an order resting on the Book,6 where that Recipient Member attempted to execute against such resting order 7 within a certain timeframe. It is important to note that the content of the Report is specific to the Recipient Member and the Report will not include any information related to any other Member.

The following information is included in the Report regarding the resting order: (A) the time the resting order was received by the Exchange; (B) symbol; (C) order reference number, which is a unique reference number assigned to a new order at the time of receipt; (D) whether the Recipient Member is an Affiliate of the Member

4 Comments received on the proposed rule change are available at: https://www.sec.gov/comments/sr-iex-2021-06/iexriex202106.htm.
6 Id.
7 Only displayed orders will be included in the Report. The Exchange notes that it does not currently offer any non-displayed orders types on its options trading platform.
8 The term “affiliated” or of another person “affiliated with” another person means a person who, directly, or indirectly, controls, is controlled by, or is under

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that entered the resting order; 9 (E) origin type (e.g., Priority Customer, 10 Market Maker; 11 (F) side (buy or sell); and (G) displayed price and size of the resting order. 12

The following information is included in the Report regarding the execution of the resting order: (A) The EBBO 13 at the time of execution; (B) the ABB0 15 at the time of execution; (C) the time the first response that executes against the resting order was received by the Exchange and the size of the execution and type of the response; 17 (D) the time difference between the time the resting order was received by the Exchange and the time the first response that executes against the resting order was received by the Exchange; 18 and (E) whether the response was entered by the Recipient Member. If the resting order executes against multiple contra-side responses, only the EBBO and ABB0 at the time of the execution against the first response will be included.

The following information is included in the Report regarding response(s) sent by the Recipient Member: (A) Recipient Member identifier; (B) the time difference between the time the first response that executes against the resting order was received by the Exchange and the time of each response sent by the Recipient Member, regardless of whether it executed or not; (C) size and type of each response submitted by Recipient Member; and (D) response reference number, which is a unique reference number attached to the response by the Recipient Member. The Report includes the data set for executions and contra-side responses that occurred within 200 microseconds of the time the resting order was received by the Exchange. The Report contains historical data from the prior trading day and will be available after the end of the trading day, generally on a T+1 basis. The Report does not include real-time data.

The Exchange believes the additional data points from the matching engine outlined above may help Members gain a better understanding about their own interactions with the Exchange. The Exchange believes the Report will provide Members with an opportunity to learn more about better opportunities to access liquidity and receive better execution rates. The Report will increase transparency and democratize information so that all firms that subscribe to the Report have access to the same information on an equal basis, even for firms that do not have the appropriate resources to generate a similar report regarding interactions with the Exchange.

Members generally would use a liquidity accessing order if there is a high probability that it will execute against an order resting on the Exchange’s Book. The Report identifies by how much time an order that may have been marketable missed an execution. The Report will provide greater visibility into the missed trading execution, which will allow Members to optimize their models and trading patterns to yield better execution results.

For purposes of calculating this duration of time, the Exchange will use the time the resting order and the Recipient Member’s response(s) is received by the Exchange’s network, both of which would be before the order and response(s) would be received by the System. This time difference would be provided in nanoseconds.

The Report will be a Member-specific report and will help Members to better understand by how much time a particular order missed executing against a specific resting order, thus allowing that Member to determine whether it wants to invest in the necessary resources and technology to mitigate missed executions against certain resting orders on the Exchange’s Book.

The Exchange proposes to provide the Report in response to Member demand for data concerning the timeliness of their incoming orders and executions against resting orders. Members have periodically requested from the Exchange’s trading operations personnel information concerning the timeliness of their incoming orders and efficacy of their attempts to execute against resting liquidity on the Exchange’s Book. The purpose of the Report is to provide Members the necessary data in a standardized format on a T+1 basis to those that subscribe to the Report on an equal basis.

The product is offered to Members on a completely voluntary basis in that the Exchange is not required by any rule or regulation to make this data available and potential subscribers may purchase the Report only if they voluntarily choose to do so. It is a business decision of each Member whether to subscribe to the Report or not.

The Exchange proposes to adopt new Section 7). Reports, in its Fee Schedule, which will provide that Members may purchase the Report on a monthly or annual (12-month) basis. The Exchange proposes to assess a monthly fee of $4,000 per month and a fee of $24,000 per year for a 12-month subscription for the Report. Members may cancel their subscription at any time. The Exchange also proposes to specify that for mid-month subscriptions, new subscribers will be charged for the full calendar month for which they subscribe and will be provided Report data for each trading day of the calendar month prior to the day on which they subscribed.

The Exchange intends to begin to offer the Report and charge the proposed fees on May 17, 2021.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act, 20 in general, and further the objectives of Section 6(b)(5) of the Act, 21 in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of

18 The time difference would be provided in nanoseconds.
trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest, and that it is not designed to permit unfair discrimination among customers, brokers, or dealers. The Exchange also believes that its proposal to adopt fees for the Report is consistent with Section 6(b)(5) of the Act,23 in general, and furthers the objectives of Section 6(b)(4) of the Act24 in particular, in that it is an equitable allocation of dues, fees and other charges among its Members and other recipients of Exchange data.

In adopting Regulation NMS, the Commission granted self-regulatory organizations ("SROs") and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. The Exchange believes that the Report further broadens the availability of U.S. option market data to investors consistent with the principles of Regulation NMS. The Report also promotes increased transparency through the dissemination of the Report. Particularly, the Report will benefit investors by facilitating their prompt access to the value-added information that is included in the Report. The Report will allow Members to access information regarding their trading activity that they may utilize to evaluate their own trading behavior and order interactions.

The Exchange operates in a highly competitive environment. Indeed, there are currently 16 registered options exchanges that trade options. Based on publicly available information, no single options exchange has more than 15% of the market share and currently the Exchange represents only approximately 6.08% of the market share.24 The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Particularly, 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."25 Making similar data products available to market participants fosters competition in the marketplace, and constrains the ability of exchanges to charge supra-competitive fees. In the event that a market participant views one exchange’s data product as more attractive than the competitive, that market participant can, and often does, switch between similar products. The proposed fees are a result of the competitive environment of the U.S. options industry as the Exchange seeks to adopt fees to attract purchasers of the recently introduced Report.

The Exchange believes the proposed fees are reasonable as the proposed fees are both modest and similar to fees assessed by other exchanges that provide similar data products.26 Indeed, if the Exchange proposed fees that market participants viewed as excessively high, then the proposed fees would simply serve to reduce demand for the Exchange’s data product, which as noted, is entirely optional. Other options exchanges are also free to introduce their own comparable data products with lower prices to better compete with the Exchange’s offering. As such, the Exchange believes that the proposed fees are reasonable and set at a level to compete with other options exchanges that may choose to offer similar reports. Moreover, if a market participant views another exchange’s potential report as more attractive, then such market participant can merely choose not to purchase the Exchange’s Report and instead purchase another exchange’s similar data product, which may offer similar data points, albeit based on that other market’s trading activity.

The Exchange also believes providing an annual subscription for an overall lower fee than a monthly subscription is equitable and reasonable because it would enable the Exchange to gauge long-term interest in the Report. A lower annual subscription fee would also incentivize Members to subscribe to the Report on a long-term basis, thereby improving the efficiency by which the Exchange may deliver the Report by doing so on a regular basis over a prolonged and set period of time. The Exchange notes that other exchanges provide annual subscriptions for reports concerning their data product offerings.27 The Exchange also believes the proposed fees are reasonable as they would support the introduction of a new market data product to Members that are interested in gaining insight into latency in connection with orders that failed to execute against an order resting on the Exchange’s Book. The Report accomplishes this by providing those Members data to analyze by how much time their order may have missed an execution against a contra-side order resting on the Book. Members may use this data to optimize their models and trading patterns in an effort to yield better execution results by calculating how much time their order may have missed an execution.

Selling market data, such as the Report, is also a means by which exchanges compete to attract business. To the extent that the Exchange is successful in attracting subscribers for the Report, it may earn trading revenues and further enhance the value of its data products. If the market deems the proposed fees to be unfair or inequitable, firms can diminish or discontinue their use of the data and/or avail themselves of similar products offered by other exchanges.28 The Exchange therefore believes that the proposed fees for the Report reflect the competitive environment and would be properly assessed on Member users. The Exchange also believes the proposed fees are equitable and not unfairly discriminatory as the fees would apply equally to all users who choose to purchase such data. It is a business decision of each Member that chooses to purchase the Report. The Exchange’s proposed fees would not differentiate between subscribers that purchase the Report and are set at a modest level that would allow any interested Member to purchase such data based on their business needs.

The Exchange reiterates that the decision as to whether or not to purchase the Report is entirely optional.

24 The NASDAQ Stock Market LLC (“NASDAQ”) charges fees ranging from $1,500 to $3,500 per month for a similar report for equity securities called the Missed Opportunity—Latency report as part of its NASDAQ Trader Insights offering. See NASDAQ Equity Section 7, Rule 146(a)(2).
25 “Regulation NMS Adopting Release.”
26 The NASDAQ Stock Market LLC (“NASDAQ”) charges fees ranging from $1,500 to $3,500 per month for a similar report for equity securities called the Missed Opportunity—Latency report as part of its NASDAQ Trader Insights offering. See NASDAQ Equity Section 7, Rule 146(a)(2).
27 Cboe Exchange, Inc. (“Cboe”) assesses a $24,000 annual fee for an intra-day subscription to Open-Close Data. See https://datashop.cboe.com/options-summary-subscription.
28 See supra note 26.
for all potential subscribers. Indeed, no market participant is required to purchase the Report, and the Exchange is not required to make the Report available to all investors. It is entirely a business decision of each Member to subscribe to the Report. The Exchange offers the Report as a convenience to Members to provide them with additional information regarding trading activity on the Exchange on a delayed basis after the close of regular trading hours. A Member that chooses to subscribe to the Report may discontinue receiving the Report at any time if that Member determines that the information contained in the Report is no longer useful.

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange made the Report available in order to keep pace with changes in the industry and evolving customer needs and demands, and believes the data product will contribute to robust competition among national securities exchanges. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges.

The Exchange also does not believe the proposed fees would cause any unnecessary or inappropriate burden on intramarket competition. Particularly, the proposed product and fees apply uniformly to any purchaser in that the Exchange does not differentiate between subscribers that purchase the Report. The proposed fees are set at a modest level that would allow any interested Member to purchase such data based on their business needs.

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,29 and Rule 19b–4(f)(2)30 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. Please include File Number SR–EMERALD–2021–19 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–2021–19 on the subject line.

SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To List and Trade Shares of the WisdomTree Bitcoin Trust Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares

May 26, 2021.

On March 26, 2021, Cboe BZX Exchange, Inc. (“BZX”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)1 and Rule 19b–421 of the Exchange Act, a proposed rule change to list and trade shares of the WisdomTree Bitcoin Trust (the “Trust”) on BZX (the “Proposed Rule Change”). The Proposed Rule Change is designed to provide investors with an alternative to directly owning Bitcoin, which is a digital asset that is not issued by a government or regulatory body and is not backed by a fiat currency. The Trust will hold a portfolio of Bitcoin futures contracts, which are standardized forward contracts to buy or sell Bitcoin at a predetermined price on a specified future date. The Proposed Rule Change will enable BZX to list and trade shares of the Trust on its national securities exchange.


The Commission received no comments on the Proposed Rule Change.

The Commission has reviewed all comments submitted on the Proposed Rule Change and finds that the Proposed Rule Change is consistent with the Act and the rules and regulations promulgated thereunder.

The Commission hereby designates a longer period of 120 days for the proposed rule change to become effective, in accordance with Sections 19(b)(2)(A) and 19(b)(2)(B) of the Act and Rule 19b–4(f)(2) of the Exchange Act.

BILING CODE 8011–01–P