

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85840; File No. SR-CboeBZX-2019-041]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Amending Its Fee Schedule Assessed on Members To Establish a Monthly Trading Rights Fee

May 10, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 2, 2019, Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange.³ 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

Cboe BZX Exchange, Inc. (the “Exchange” or “BZX Equities”) proposes to amend its fee schedule assessed on Members to establish a monthly Trading Rights Fee. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange’s website (http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/), at the Exchange’s Office of the Secretary, 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 purpose of the proposed rule change is to establish a monthly Trading Rights Fee under the “Membership Fees” section of the fee schedule. The Trading Rights Fee will be assessed on Members that trade more than a specified volume in U.S. equities, and will assist in covering the cost of regulating the Exchange and its Members. Specifically, the Exchange proposes to charge Member firms a monthly Trading Rights Fee of \$500 per month for the ability to trade on the Exchange. So as to continue to encourage active participation on the Exchange by smaller Members, the Trading Rights Fee would not be charged to Members with a monthly ADV⁴ of less than 100,000 shares. Similarly, to continue to support individual investor order flow on the Exchange, the Trading Rights Fee would not be charged to Members in which at least 90% of their orders submitted to the Exchange per month are retail orders.

Additionally, the Exchange recognizes that new Members are new and important sources of liquidity. As such, the Exchange proposes that new Exchange Members will not be charged the proposed Trading Rights Fee for their first three months of Membership. Moreover, for any month in which a firm is approved for Membership with the Exchange, the monthly Trading Rights Fee will be pro-rated in accordance with the date on which Membership is approved. For example, if a firm’s Membership is approved on May 15, 2019, then, as proposed, it would not be charged for its first three months of Membership. The month of August would then be pro-rated and the Trading Rights Fee would be assessed from August 15, 2019 through the end of the month. During any month in which a firm terminates Membership with the Exchange, the monthly Trading Rights Fee will not be pro-rated.

As proposed, the Exchange believes the Trading Rights Fee assessed aligns with the benefit provided by allowing Members to trade on an efficient and well-regulated market. The proposed Trading Rights Fee will fund a portion

of the cost of regulating and maintaining the Exchange’s equities market. Lastly, the Exchange believes the cost of Exchange Membership, including the proposed Trading Rights Fees, is significantly lower than the cost of membership in a number of other SROs.⁵

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.⁶ Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,⁷ which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Members and other persons using its facilities.

In particular, the Exchange believes that the proposed Trading Right Fee is reasonable because the fee will assist in funding the overall regulation and maintenance of the Exchange. Additionally, the Exchange believes the fee is reasonable because the cost of this membership fee is generally less than the analogous membership fees of other markets. For example, the Exchange’s proposed Trading Rights Fee at \$500 a month is substantially lower than the NASDAQ Stock Market’s (“Nasdaq”) analogous fee, which assesses a monthly Trading Rights Fee of \$1,250 per member.

In addition to this, the Exchange believes that not charging a Trading Rights Fee for Members that trade less than a monthly ADV of 100,000 shares is reasonable because it ensures that smaller Members who do not trade significant volume on BZX Equities can continue to trade on the Exchange at a lower cost. The Exchange believes that not charging a fee for such Members is reasonable because smaller Members with lower volumes executed on the Exchange consume fewer regulatory resources. The Exchange also believes that not charging a Trading Rights Fee for Members that submit 90% or more of their orders per month as retail orders

⁵ See NASDAQ Stock Market Equity Rules, Equity 7, Sec. 10(a) (assessing a trading rights fee of \$1,250 per month per each member); New York Stock Exchange Price List 2019, “Trading Licenses” (assessing an annual fee \$50,000 for the first trading license held by a member, to which the Exchange notes that the Exchange assesses a \$2,500 annual fee for membership, and that this annual fee coupled with 12 months of the proposed Trading Rights Fees remains substantially lower than NYSE’s annual trading license fee).

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Commission notes that the Exchange initially filed the proposed rule change on April 29, 2019 (SR-CboeBZX-2019-036). On May 2, 2019, the Exchange withdrew that filing and submitted this filing.

⁴ “ADV” means average daily volume calculated as the number of shares added or removed, combined, per day. ADV is calculated on a monthly basis.

is reasonable because it ensures retail broker Members can continue to submit orders for individual investors at a lower cost, thereby continuing to encourage retail investor participation on the Exchange. Furthermore, continuing to allow smaller Members and retail broker Members to trade on the Exchange without incurring a Trading Rights Fee may encourage additional participation from such Members and thereby contribute to a more diverse and competitive market for equity securities traded on the Exchange.

Additionally, the Exchange believes that not charging its new Members the proposed Trading Rights Fee for their first three months of Membership is reasonable because it provides an incentive for firms and other participants that are not currently Members of the Exchange to apply for Membership and bring additional liquidity to the market to the benefit of all market participants. The Exchange believes that not charging a Trading Rights Fee for new Members will incentivize firms to become Members of the Exchange. The Exchange believes creating incentives for new Exchange Members protects investors and the public interest by increasing the competition and liquidity across the Exchange.

The Exchange believes that the proposed Trading Rights Fee is equitable and is not unfairly discriminatory because it will apply equally to all Members with an ADV of 100,000 shares or more traded per month and all Members in which less than 90% of their orders are submitted as retail orders per month.⁸ The Exchange believes that not charging the Trading Rights Fee for Members that do not meet these thresholds in a month is not unfairly discriminatory as it is designed to reduce the costs of smaller Members and retail-based Members that transact on the Exchange. Furthermore, the Exchange believes that not charging a Trading Rights Fee for a new Member for the first three months of Membership is equitable and not unfairly discriminatory because the proposed waiver will be offered to all market participants that wish to become Members of the Exchange. As stated, the proposed waiver intends to incentivize new Membership which will bring increased liquidity and competition to the benefit of all market participants. In

addition to this, the Exchange notes that the proposed fee is equitable and not unfairly discriminatory because it will contribute revenue to a portion of the costs incurred by the Exchange in providing its Members with an efficient and well-regulated market, which benefits all Members.

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 that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary in furtherance of the purposes of the Act because the proposed rule change will apply equally to all Members that reach an ADV of 100,000 shares traded or greater, and those that submit less than 90% of their orders as retail orders per month. Although smaller Members would be excluded from the Trading Rights Fee, the Exchange believes that this may increase competition by encouraging additional order flow from such smaller Members thereby contributing to a more diverse, vibrant, and competitive market. Additionally, while the proposed three month waiver of the Trading Rights Fee only applies to new Members, new Members can be an important source of liquidity and facilitate competition within the market, which uniformly benefits all market participants.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the Exchange operates in a highly competitive environment in which market participants can readily favor competing exchanges and marketplaces if they deem fee levels at a particular exchange or other venue to be excessive. If the proposed fee increase is unattractive to members, it is likely that the Exchange will lose membership and market share as a result. As a result, the Exchange carefully considers any increases to its fees, balancing the utility in remaining competitive with other exchanges and with alternative trading systems exempted from compliance with the statutory standards applicable to exchanges, and in covering costs associated with maintaining its equities market and its regulatory programs to ensure that the Exchange remains an efficient and well-regulated marketplace. The Exchange notes that

competitors are free to modify their own fees in response to its proposal, and because Members are not compelled to be Members of the Exchange and may trade on numerous other exchanges and other alternative venues, the Exchange believes that the proposed fee change will not impose a burden on intermarket competition.

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

The Exchange neither solicited nor received comments on the proposed rule change.

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) of the Act⁹ and paragraph (f) of Rule 19b-4¹⁰ 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 will 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. Please include File Number SR-CboeBZX-2019-041 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-CboeBZX-2019-041. This file number should be included on the subject line if email is used. To help the Commission process and review your

⁸ A Member will not be charged if it meets either one (or both) of the exceptions. To illustrate, if a Member submits 5% of its orders as retail orders but only has an ADV of 90,000 shares traded, that Member will not be charged the proposed Trading Rights Fee.

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f).

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-CboeBZX-2019-041 and should be submitted on or before June 6, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Eduardo A. Aleman,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85839; File No. SR-EMERALD-2019-20]

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt System Connectivity Fees

May 10, 2019.

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 April 30, 2019, MIAX Emerald, LLC ("MIAX Emerald" or "Exchange"), filed with the Securities and Exchange Commission ("Commission") a proposed rule change

as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange is filing a proposal to amend the MIAX Emerald Fee Schedule (the "Fee Schedule") to adopt the Exchange's system connectivity fees.

The Exchange initially filed the proposal on March 1, 2019 (SR-EMERALD-2019-11). That filing has been withdrawn and replaced with the current filing (SR-EMERALD-2019-20).

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 regarding connectivity to the Exchange. Specifically, the Exchange proposes to amend Sections 5a) and b) of the Fee Schedule to adopt the network connectivity fees for the 1 Gigabit ("Gb") fiber connection and the 10Gb ultra-low latency ("ULL") fiber connection, which are charged to both Members³ and non-Members of the Exchange for connectivity to the Exchange's primary/secondary facility. The Exchange also proposes to adopt network connectivity fees for the 1Gb and 10Gb fiber connections for

connectivity to the Exchange's disaster recovery facility. Each of these connections (with the exception of the 10Gb ULL) are shared connections (collectively, the "Shared Connections"), and thus can be utilized to access the Exchange and both of the Exchange's affiliates, Miami International Securities Exchange, LLC ("MIAX") and MIAX PEARL, LLC ("MIAX PEARL"). The 10Gb ULL connection is a dedicated connection ("Dedicated Connection"), which provides network connectivity solely to the trading platforms, market data systems, and test system facilities of MIAX Emerald. These proposed fees are collectively referred to herein as the "Proposed Fees." The amounts of the Proposed Fees for the Shared Connections are the same amounts that are currently in place at MIAX and MIAX PEARL.⁴ While the Exchange is new and only launched trading on March 1, 2019, since: (i) All of the Proposed Fees (except for the fee relating to the 10Gb ULL connection) relate to Shared Connections, and thus are the same amounts as are currently in place at MIAX and MIAX PEARL; (ii) all of the Members of MIAX Emerald are also members of either MIAX and/or MIAX PEARL, and most of those Members already have connectivity to the Exchange via existing Shared Connections (without paying any new incremental connectivity fees), the Exchange is providing similar information to that which was provided in the MIAX and PEARL Fee Filings, including providing detail about the market participants impacted by the Proposed Fees, as well as the costs incurred by the Exchange associated with providing the connectivity alternatives, in order to provide transparency and support relating to the Exchange's belief that the Proposed Fees are reasonable, equitable, and non-discriminatory, and to provide sufficient information for the Commission to determine that the Proposed Fees are consistent with the Act.

The Exchange initially filed the Proposed Fees on March 1, 2019, designating the Proposed Fees immediately effective.⁵ The First Proposed Rule Change was published for comment in the **Federal Register** on March 20, 2019.⁶ The First Proposed Rule Change provided information about the market participants impacted

⁴ See SR-MIAX-2019-23 and SR-PEARL-2019-17 (the "MIAX and PEARL Fee Filings").

⁵ See Securities Exchange Act Release No. 85316 (March 14, 2019), 84 FR 10350 (March 20, 2019) (SR-EMERALD-2019-11) (the "First Proposed Rule Change").

⁶ *Id.*

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The term "Member" means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed "members" under the Exchange Act. See Exchange Rule 100.