

information that you wish to make available publicly. All submissions should refer to File Number SR–MEMX–2021–20 and should be submitted on or before February 9, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**J. Matthew DeLesDernier,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93968; File No. SR–EMERALD–2021–46]

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

January 12, 2022.

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 December 29, 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 MIAX Emerald Fee Schedule (the “Fee Schedule”) to reflect adjustments to the Financial Industry Regulatory Authority (“FINRA”) Registration Fees.<sup>3</sup>

While the changes proposed herein are effective upon filing, the Exchange has designated the amendments to become operative on January 2, 2022.<sup>4</sup>

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 Section 2(c) of the Fee Schedule, Web CRD Fees, to reflect adjustments to the FINRA Registration Fees.<sup>5</sup> The FINRA fees are collected and retained by FINRA via Web Central Registration Depository (“CRD”) for the registration of associated persons of MIAX Emerald Electronic Exchange Member<sup>6</sup> and Market Maker<sup>7</sup> organizations that are not also FINRA members (“Non-FINRA members”).<sup>8</sup> The Exchange merely lists these fees in its Fee Schedule. The Exchange does not collect or retain these fees.

Since March 1, 2019, FINRA has assessed, and the Exchange has listed in its Fee Schedule, a \$100 fee for the FINRA CRD processing fee.<sup>9</sup> This fee is for all initial, transfer, relicense, and dual registration Form U4 filings.<sup>10</sup> This fee is assessed when a non-FINRA firm (*i.e.*, a firm that is not a member of FINRA) submits its first initial, transfer, relicense, or dual registration Form U4 filing on behalf of a registered person.<sup>11</sup>

The Exchange now proposes to amend, under the General Registration Fees in Section 2(c) of the Fee Schedule, the FINRA CRD Processing Fee from

\$100 to \$125 for each initial Form U4 filed for the registration of a representative or principal. This amendment is made in accordance with a recent FINRA rule change to adjust its fees.<sup>12</sup>

The FINRA fees are collected and retained by FINRA via Web CRD for the registration of employees of the Exchange who are Non-FINRA members. The FINRA Web CRD Fees are user-based, and there is no distinction in the cost incurred by FINRA if the user is a FINRA member or a Non-FINRA member. Accordingly, the proposed fees mirror those currently assessed by FINRA. The Exchange merely lists these fees in its Fee Schedule. The Exchange does not collect or retain these fees.

##### Implementation

The proposed rule change will become operative on January 2, 2022.

###### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>13</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>14</sup> requirements that the rules of an exchange be 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>15</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes it is reasonable to increase the \$100 fee for each initial Form U4 filed for the registration of a representative or principal to \$125 in accordance with an adjustment to

<sup>12</sup> *Id.* FINRA operates Web CRD, the central licensing and registration system for the U.S. securities industry. FINRA uses Web CRD to maintain the qualification, employment and disciplinary histories of registered associated persons of broker-dealers. FINRA noted in its rule change that it was adjusting its fees to provide sustainable funding for FINRA's regulatory mission.

<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(5).

<sup>15</sup> *Id.*

<sup>17</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.

<sup>3</sup> See Fee Schedule, Section 2(c).

<sup>4</sup> See Securities Exchange Act Release No. 90176 (October 14, 2020), 85 FR 66592 (October 20, 2020) (SR–FINRA–2020–032) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Adjust FINRA Fees to Provide Sustainable Funding for FINRA's Regulatory Mission).

<sup>5</sup> *Id.*

<sup>6</sup> “Electronic Exchange Member” means the holder of a Trading Permit who is not a Market Maker. Electronic Exchange Members are deemed “members” under the Exchange Act. See Exchange Rule 100.

<sup>7</sup> “Market Makers” means “Lead Market Maker,” “Primary Lead Market Maker” and “Registered Market Maker” collectively. See Exchange Rule 100.

<sup>8</sup> See Securities Exchange Act Release No. 85393 (March 21, 2019), 84 FR 11599 (March 27, 2019) (SR–EMERALD–2019–15).

<sup>9</sup> See *id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

FINRA's fees. The Exchange's rule text will reflect the current registration rate that will be assessed by FINRA as of January 2, 2022. The proposed fee change is identical to that adopted by FINRA for use of Web CRD for the registration of FINRA members and their associated persons. These costs are borne by FINRA when a Non-FINRA member uses Web CRD.

The Exchange believes that its proposal to increase the \$100 fee for each initial Form U4 filed for the registration of a representative or principal to \$125 is equitable and not unfairly discriminatory as the amendment will reflect the current fee that will be assessed by FINRA to all members who require Form U4 filings as of January 2, 2022. Further, the proposal is also equitable and not unfairly discriminatory because the Exchange will not be collecting or retaining these fees; therefore, the Exchange will not be in a position to apply them in an inequitable or unfairly discriminatory manner. The proposed rule change was based on recent fee adjustments currently assessed by FINRA.<sup>16</sup> Thus, the proposed change does not raise any new or novel issues. For these reasons, the Exchange believes that the proposal is consistent with the Act.

#### *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 believes that its proposal to increase the \$100 fee for each initial Form U4 filed for the registration of a representative or principal to \$125 does not impose an undue burden on competition as the amendment will reflect the current fee that will be assessed by FINRA to all members who require Form U4 filings as of January 2, 2022. Further, the proposal does not impose an undue burden on competition because the Exchange will not be collecting or retaining these fees; therefore, the Exchange will not be in a position to apply them in an inequitable or unfairly discriminatory manner.

#### *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 of Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>17</sup> and Rule 19b-4(f)(2)<sup>18</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-2021-46 on the subject line.

#### *Paper Comments*

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

All submissions should refer to File Number SR-EMERALD-2021-46. 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-EMERALD-2021-46 and should be submitted on or before February 9, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-93963; File Nos. SR-CboeBYX-2021-027; SR-CboeBZX-2021-076; SR-CboeEDGA-2021-024; SR-CboeEDGX-2021-048]

### **Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Cboe BZX Exchange, Inc.; Cboe EDGA Exchange, Inc.; Cboe EDGX Exchange, Inc.; Order Granting Approval of Proposed Rule Changes To Amend Each Exchange's Rules in Connection With a Risk Setting That Users May Elect To Apply to Their Orders in Hard To Borrow Securities**

January 12, 2022.

#### **I. Introduction**

On November 8, 2021, Cboe BYX Exchange, Inc. ("CboeBYX") and Cboe BZX Exchange, Inc. ("CboeBZX"), and on November 18, 2021, Cboe EDGA Exchange, Inc. ("CboeEDGA") and Cboe EDGX Exchange, Inc. ("CboeEDGX," and collectively, the "Exchanges"), each 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 allow each Exchange to offer its Users<sup>3</sup> a hard to borrow risk setting

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

<sup>18</sup> 15 U.S.C. 78s(b)(1).

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

<sup>3</sup> A User is any Member or Sponsored Participant who is authorized to obtain access to the System. See Cboe BYX Rule 1.5(cc); Cboe BZX Rule 1.5(cc);

Continued

<sup>16</sup> See *supra* note 4.

<sup>17</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>18</sup> 17 CFR 240.19b-4(f)(2).