

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 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>16</sup> of the Act and subparagraph (f)(2) of Rule 19b-4 <sup>17</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>18</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-NYSENAT-2022-20 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-NYSENAT-2022-20. 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-NYSENAT-2022-20 and should be submitted on or before October 19, 2022.

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

**J. Matthew DeLesDernier,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-95871; File No. SR-FINRA-2022-026]

**Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Change References in the Codes of Arbitration Procedure From the Neutral List Selection System to the List Selection Algorithm**

September 22, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act") <sup>1</sup> and Rule 19b-4 thereunder, <sup>2</sup> notice is hereby given that on September 15, 2022, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b-4 under the Act, <sup>3</sup> which renders the proposal effective upon receipt of this filing by the Commission. 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**

FINRA is proposing to change references in the Codes of Arbitration Procedure ("Codes") from the Neutral List Selection System to the list selection algorithm.

The text of the proposed rule change is available on FINRA's website at <http://www.finra.org>, at the principal office of FINRA 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, FINRA 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. FINRA has prepared summaries, set forth in sections A, B,

<sup>16</sup> 15 U.S.C. 78s(b)(3)(A).

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

<sup>18</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>19</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> 17 CFR 240.19b-4(f)(6).

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**

From November 1998 until October 2006, the Neutral List Selection System ("NLSS") was the computer system that generated lists of arbitrators from FINRA Dispute Resolution Services' ("DRS") rosters of arbitrators for the selected hearing location for each arbitration proceeding. In October 2006, DRS replaced the NLSS with the Mediation and Arbitration Tracking and Retrieval Interactive Case System ("MATRICS").<sup>4</sup> As a result, all of the information contained in the NLSS was transferred to MATRICS such that MATRICS now contains the list selection algorithm DRS uses to generate lists of arbitrators from its rosters of arbitrators.<sup>5</sup> However, the Codes refer to the NLSS as a computer system that governs arbitrator list selection in the DRS arbitration forum.<sup>6</sup>

FINRA is proposing to update the Codes by making technical, non-substantive changes to remove references to the NLSS from those rules describing arbitrator list selection and instead refer to the "list selection algorithm."<sup>7</sup> The proposed rule change

would provide greater transparency and consistency regarding arbitrator list selection, as the Codes would reflect and align with DRS's existing practices, processes and systems relating to arbitrator list selection.

In the proposed rule change, FINRA is not proposing any changes to the list selection algorithm, or any of DRS's existing practices, processes and systems related to arbitrator list selection.<sup>8</sup>

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so FINRA can implement the proposed rule change immediately.

**2. Statutory Basis**

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Exchange Act,<sup>9</sup> which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will provide greater transparency to members and the public regarding arbitrator list selection by updating FINRA rules to reflect and align with DRS's existing practices, processes and systems related to arbitrator list selection.

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

FINRA 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 Exchange Act. The proposed rule change brings transparency and consistency to FINRA

with One Arbitrator), 12403 (Cases with Three Arbitrators), 12404 (Additional Parties), 12800 (Simplified Arbitration), 12801 (Default Proceedings), 13400 (List Selection Algorithm and Arbitrator Rosters), 13403 (Generating and Sending Lists to the Parties), 13406 (Appointment of Arbitrators; Discretion to Appoint Arbitrators Not on List), 13407 (Additional Parties), 13411 (Replacement of Arbitrators), 13800 (Simplified Arbitration), 13801 (Default Proceedings) and 13803 (Coordination of Sexual Assault Claims, Sexual Harassment Claims or Statutory Employment Discrimination Claims Filed in Court and in Arbitration).

<sup>8</sup> The proposed rule change would apply to all members, including members that are funding portals or have elected to be treated as capital acquisition brokers ("CABs"), given that the funding portal and CAB rule sets incorporate the impacted FINRA rules by reference.

<sup>9</sup> 15 U.S.C. 78o-3(b)(6).

rules without adding any burden on member firms.

*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**

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>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</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 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-FINRA-2022-026 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-FINRA-2022-026. 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

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>4</sup> MATRICS is an internal, web-based computer system used to manage all arbitration and mediation cases in the DRS arbitration forum and to maintain DRS's rosters of arbitrators and mediators.

<sup>5</sup> See Securities Exchange Act Release No. 51339 (March 9, 2005), 70 FR 12763 (March 15, 2005) (Order Approving File No. SR-NASD-2004-164); see also *Notice to Members* 07-07 (February 2007) (announcing the effective date of April 16, 2007 for the amendments discussed in File No. SR-NASD-2004-164).

<sup>6</sup> In February 2022, the Audit Committee of FINRA's Board of Governors engaged Lowenstein Sandler LLP to provide an independent review and analysis in connection with a Fulton County (Georgia) Superior Court decision vacating an arbitration award in favor of Wells Fargo Clearing Services, LLC. See Order Granting Mot. to Vacate Arb. Award and Den. Cross Mot. to Confirm Arb. Award at 37, *Leggett v. Wells Fargo Clearing Servs., LLC*, No. 2019-CV-328949 (Ga. Super. Ct., January 25, 2022). In its report, Lowenstein Sandler made several recommendations to provide greater transparency and consistency in the arbitrator selection process, one of which was to make technical amendments to the Codes to clarify the automated system used by DRS for arbitrator selection. See <https://www.finra.org/sites/default/files/2022-06/report-independent-review-drs-arbitrator-selection-process.pdf>. Since publication of the report, the Fulton County (Georgia) Superior Court's decision was reversed by the Court of Appeals of Georgia. See *Wells Fargo Clearing Servs. v. Leggett*, No. A22A1149, 2022 Ga. App. (Ct. App. August 2, 2022).

<sup>7</sup> See proposed Rules 12400 (List Selection Algorithm and Arbitrator Rosters), 12402 (Cases

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 such filing also will be available for inspection and copying at the principal office of FINRA. 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-FINRA-2022-026 and should be submitted on or before October 19, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-95885; File No. SR-EMERALD-2022-29]

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

September 22, 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 September 13, 2022, 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").

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 1(a)i) of the Fee Schedule to amend the rebates provided for Market Maker Origins for Simple<sup>3</sup> Maker (defined below) volume in Penny Classes (defined below) that trade contra to Priority Customers<sup>4</sup> Origins by \$0.02 in each Tier (defined below). The Exchange initially filed this proposal on September 1, 2022 (SR-EMERALD-2022-26). On September 13, 2022, the Exchange withdrew SR-EMERALD-2022-26 and resubmitted this proposal (SR-EMERALD-2022-29).

###### Background

The Exchange currently assesses transaction rebates and fees to all

market participants, which are based upon a threshold tier structure ("Tier"). 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, except the Priority Customer Origin type. For the Priority Customer Origin calculation, the Tier applied for a Member and its Affiliates<sup>6</sup> is solely determined by calculation Method 3, as defined in Section 1(a)ii) of the Fee Schedule, titled "Total Priority Customer, Maker sides volume, based on % of CTCV ('Method 3')." The monthly volume thresholds for each of the methods, 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>7</sup> (as the numerator) expressed as a percentage of (divided by) Customer

<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> "Affiliate" means (i) an affiliate of a Member of at least 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A, or (ii) the Appointed Market Maker of an Appointed EEM (or, conversely, the Appointed EEM of an Appointed Market Maker). An "Appointed Market Maker" is a MIAX Emerald Market Maker (who does not otherwise have a corporate affiliation based upon common ownership with an EEM) that has been appointed by an EEM and an "Appointed EEM" is an EEM (who does not otherwise have a corporate affiliation based upon common ownership with a MIAX Emerald Market Maker) that has been appointed by a MIAX Emerald Market Maker, pursuant to the following process. A MIAX Emerald Market Maker appoints an EEM and an EEM appoints a MIAX Emerald Market Maker, for the purposes of the Fee Schedule, by each completing and sending an executed Volume Aggregation Request Form by email to [membership@miaxoptions.com](mailto:membership@miaxoptions.com) no later than 2 business days prior to the first business day of the month in which the designation is to become effective. Transmittal of a validly completed and executed form to the Exchange along with the Exchange's acknowledgement of the effective designation to each of the Market Maker and EEM will be viewed as acceptance of the appointment. The Exchange will only recognize one designation per Member. A Member may make a designation not more than once every 12 months (from the date of its most recent designation), which designation shall remain in effect unless or until the Exchange receives written notice submitted 2 business days prior to the first business day of the month from either Member indicating that the appointment has been terminated. Designations will become operative on the first business day of the effective month and may not be terminated prior to the end of the month. Execution data and reports will be provided to both parties. See the Definitions Section of the Fee Schedule.

<sup>7</sup> The term "Excluded Contracts" means any contracts routed to an away market for execution. See the Definitions Section of the Fee Schedule.

<sup>12</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> The Simple Order Book is the Exchange's regular electronic book of orders and quotes. See Exchange Rule 518(a)(15).

<sup>4</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.