

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,⁸ and Rule 19b-4(f)(2)⁹ 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-MIAX-2021-54 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-MIAX-2021-54. 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-MIAX-2021-54 and should be submitted on or before December 1, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-93527; File No. PCAOB-2021-01]

Public Company Accounting Oversight Board; Order Granting Approval of Proposed Rule Governing Board Determinations Under the Holding Foreign Companies Accountable Act

November 4, 2021.

I. Introduction

On September 23, 2021, the Public Company Accounting Oversight Board (the "Board" or the "PCAOB") filed with the Securities and Exchange Commission (the "Commission"), pursuant to Section 107(b)¹ of the Sarbanes-Oxley Act of 2002 (as amended, the "Sarbanes-Oxley Act") and Section 19(b)² of the Securities Exchange Act of 1934 (the "Exchange Act"), a proposal to adopt a new rule, PCAOB Rule 6100, *Board Determinations Under the Holding Foreign Companies Accountable Act* (the "Proposed Rule").³ The Proposed

Rule was published for comment in the **Federal Register** on September 28, 2021.⁴ This order approves the Proposed Rule, which we find to be consistent with the requirements of the Sarbanes-Oxley Act and the securities laws and necessary or appropriate in the public interest or for the protection of investors.

II. Description of the Proposed Rule

On September 22, 2021, the Board adopted the Proposed Rule,⁵ which is intended to establish a framework for the Board's determinations under the Holding Foreign Companies Accountable Act (the "HFCAA") that the Board is unable to inspect or investigate completely registered public accounting firms located in a foreign jurisdiction because of a position taken by one or more authorities in that jurisdiction.

The Proposed Rule establishes:

- The manner of the Board's determinations;
- The factors the Board will evaluate and the documents and information the Board will consider when assessing whether a determination is warranted;
- The form, public availability, effective date, and duration of such determinations; and
- The process by which the Board will reaffirm, modify, or vacate any such determinations.

A. Applicability and Effective Date

The Proposed Rule will be effective promptly upon approval by the Commission.

III. Comment Letters

The comment period on the Proposed Rule ended on October 18, 2021, and we did not receive any comments on the Proposed Rule. The PCAOB received and considered public comments prior to adopting the Proposed Rule.

IV. Effect on Emerging Growth Companies

In the PCAOB Adopting Release, the Board concluded that Section 103(a)(3)(C) of the Sarbanes-Oxley Act does not apply to the Proposed Rule.⁶ Section 103(a)(3)(C) of the Sarbanes-Oxley Act requires that any rules of the

Act, PCAOB Release No. 2021-004 (Sept. 22, 2021) ("PCAOB Adopting Release"), available at https://pcaob-assets.azureedge.net/pcaob-dev/docs/default-source/rulemaking/docket048/2021-004-hfcaa-adopting-release.pdf?sfvrsn=f6dfb7f8_4.

⁴ See *Public Company Accounting Oversight Board; Notice of Filing of Proposed Rule on Board Determinations Under the Holding Foreign Companies Accountable Act*, Release No. 34-93112 (Sept. 23, 2021) [86 FR 53699 (Sept. 28, 2021)].

⁵ See *supra* note 3.

⁶ See PCAOB Adopting Release at footnote 112.

⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

⁹ 17 CFR 240.19b-4(f)(2).

¹⁰ 17 CFR 200.30-3(a)(12).

¹¹ 15 U.S.C. 7217(b).

¹² 15 U.S.C. 78s(b).

³ See *Rule Governing Board Determinations Under the Holding Foreign Companies Accountable*

Board “requiring mandatory audit firm rotation or a supplement to the auditor’s report in which the auditor would be required to provide additional information about the audit and the financial statements of the issuer (auditor discussion and analysis) shall not apply to an audit of an emerging growth company [EGC].”⁷ The provisions of the Proposed Rule do not fall into these categories.

Section 103(a)(3)(C) further provides that “[a]ny additional rules” adopted by the PCAOB after April 5, 2012, do not apply to audits of EGCs “unless the Commission determines that the application of such additional requirements is necessary or appropriate in the public interest, after considering the protection of investors and whether the action will promote efficiency, competition, and capital formation.” Since the Proposed Rule does not specify additional requirements for audits of EGCs, this provision does not apply to the Proposed Rule.

While we agree with the Board’s conclusion that Section 103(a)(3)(C) of the Sarbanes-Oxley Act does not apply to the Proposed Rule, we nonetheless believe the Proposed Rule is necessary or appropriate in the public interest, after considering the protection of investors and whether the action will promote efficiency, competition, and capital formation. Specifically, by establishing a framework for the Board’s determinations under the HFCOA and requiring firms to update their information promptly, all firms, including auditors of EGCs, and investors equally benefit from the transparency of the Board’s determination set forth in the Proposed Rule.

V. Conclusion

The Commission has carefully reviewed and considered the Proposed Rule and the information submitted therewith by the PCAOB. In connection with the PCAOB’s filing and the Commission’s review,

A. The Commission finds that the Proposed Rule is consistent with the requirements of the Sarbanes-Oxley Act and the securities laws and is necessary or appropriate in the public interest or for the protection of investors; and

B. Separately, the Commission finds that Section 103(a)(3)(C) of the Sarbanes-Oxley Act does not apply to the Proposed Rule.

It is therefore ordered, pursuant to Section 107 of the Sarbanes-Oxley Act and Section 19(b)(2) of the Exchange Act, that the Proposed Rule (File No. PCAOB–2021–01) be and hereby is approved.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93526; File No. SR–EMERALD–2021–36]

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

November 4, 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 October 22, 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 make non-substantive, clarifying changes.

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 make non-substantive, clarifying changes to Sections (3)(b) and (5)(d)(ii) for the monthly Trading Permit fees for Market Makers³ and the monthly MIAX Emerald Express Interface (“MEI”)⁴ Port fees for Market Makers. The Exchange does not propose to amend the amount of Trading Permit fees or MEI Port fees in this filing. The Exchange also does not propose to amend the calculation methodology for Trading Permit fees or MEI Port fees in this filing.

Monthly Market Maker Trading Permit Fee Clarifying Changes

First, the Exchange proposes to amend Section 3(b) of the Fee Schedule to amend the text below the table for the monthly Trading Permit fees applicable to Market Makers. Specifically, the Exchange proposes to add the following two clarifying sentences to begin the explanatory paragraph following the table for the monthly Trading Permit fees applicable to Market Makers:

For the calculation of the monthly Market Maker Trading Permits, the applicable fee rate is the lesser of either the per class basis or percentage of total national average daily volume measurement. The amount of monthly Market Maker Trading Permit Fee will be based upon the number of classes in which the Market Maker was assigned to quote on any given day within the calendar month, or upon the class volume percentages set forth in the above table.

The Exchange also proposes to remove the following sentence, which is currently the first sentence of the explanatory paragraph below the table for the monthly Trading Permit fees applicable to Market Makers:

For the calculation of the monthly Market Maker Trading Permit Fees, the number of classes is defined as the greatest number of classes the Market Maker was assigned to quote in on any given day within the calendar month and the class volume

³ The term “Market Makers” refers to “Lead Market Makers,” “Primary Lead Market Makers,” and “Registered Market Makers” collectively. See Exchange Rule 100.

⁴ MIAX Emerald Express Interface (“MEI”) is a connection to the MIAX Emerald System that enables Market Makers to submit simple and complex electronic quotes to MIAX Emerald. See the Definitions Section of the Fee Schedule.

⁷ The term “emerging growth company” is defined in Section 3(a)(80) of the Exchange Act (15 U.S.C. 78c(a)(80)). See also Release No. 33–10332 *Inflation Adjustments and Other Technical Amendments Under Titles I and III of the JOBS Act* (Mar. 31, 2017) [82 FR 17545 (Apr. 12, 2017)].

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.