

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-99923; File No. SR-EMERALD-2024-13)

April 9, 2024

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Exchange Rule 531

Pursuant to the provisions of 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 5, 2024, MIAX Emerald, LLC (“MIAX Emerald” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I and II 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 proposes to: (i) amend subparagraph (b)(2) of Exchange Rule 531, Reports, Market Data Products and Services, to adjust the timeframe for the Liquidity Taker Event Report – Complex Orders; and (ii) make a non-substantive, clarifying change to a footnote in prior rule filings submitted to the U.S. Securities and Exchange Commission (“Commission”) for approval pursuant to Section 19(b)(2) of the Act³ and Rule 19b-4⁴ to adopt the Liquidity Taker Event Report – Simple Orders, and filings submitted for immediate effectiveness pursuant

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(2).

⁴ 17 CFR 240.19b-4.

to Section 19(b)(3)(A) of the Act⁵ and Rule 19b-4(f)(6)⁶ to adopt the Liquidity Taker Event Report – Complex Orders and Liquidity Taker Event Report – Resting Simple Orders.⁷

The text of the proposed rule change is available on the Exchange’s website at <https://www.miaxglobal.com/markets/us-options/emerald-options/rule-filings>, at MIAX Emerald’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 offers three versions of the Liquidity Taker Event Report: (1) Liquidity Taker Event Report – Simple Orders (referred to herein as the “Simple Order Report”); (2) Liquidity Taker Event Report – Complex Orders (referred to herein as the “Complex Order Report”); and (3) Liquidity Taker Event Report – Resting Simple Orders (referred to herein as

⁵ 15 U.S.C. 78s(b)(3)(A).

⁶ 17 CFR 240.19b-4(f)(6).

⁷ The Exchange notes that it submitted the first filing to adopt the Liquidity Taker Event Report – Simple Orders, pursuant to Section 19(b)(2) of the Act, 15 U.S.C. 78s(b)(2). See Securities Exchange Act Release Nos. 91356 (March 18, 2021), 86 FR 15759 (March 24, 2021) (SR-EMERALD-2021-09) (Notice of Filing of a Proposed Rule Change To Adopt Exchange Rule 531, Reports, To Provide for the New “Liquidity Taker Event Report”); and 91787 (May 6, 2021), 86 FR 26111 (May 12, 2021) (SR-EMERALD-2021-09) (Order Approving Proposed Rule Change To Adopt Exchange Rule 531(a), Reports, To Provide for a New “Liquidity Taker Event Report”).

the “Resting Simple Order Report”).⁸ Each of the Reports are available for purchase by Exchange Members⁹ on a voluntary basis. The Exchange’s prior rule filing to adopt the Simple Order Report was submitted to the Commission for approval pursuant to Section 19(b)(2) of the Act¹⁰ and Rule 19b-4¹¹ thereunder and the Exchange’s prior filings to adopt the Complex Order Report and Resting Simple Order Report were submitted to the Commission for immediate effectiveness pursuant to Section 19(b)(3)(A) of the Act¹² and Rule 19b-4(f)(6) thereunder.¹³ Each Liquidity Taker Event Report is described under Exchange Rules 531(a)-(c).¹⁴

In general, each Liquidity Taker Event Report is a daily report that provides a Member (“Recipient Member”) with its liquidity response time details for executions and contra-side responses of an order (or Complex Order¹⁵, as the case may be) resting on the Simple Order Book (or Strategy Book, as the case may be),¹⁶ where that Recipient Member attempted to

⁸ The Simple Order Report, Complex Order Report and Resting Simple Order Report are collectively referred to herein as the “Reports.”

⁹ 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.

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 240.19b-4.

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ See Exchange Rule 531(a)-(c); see also Securities Exchange Act Release Nos. 91356 (March 18, 2021), 86 FR 15759 (March 24, 2021) (SR-EMERALD-2021-09) (Notice of Filing of a Proposed Rule Change To Adopt Exchange Rule 531, Reports, To Provide for the New “Liquidity Taker Event Report”); 91787 (May 6, 2021), 86 FR 26111 (May 12, 2021) (SR-EMERALD-2021-09) (Order Approving Proposed Rule Change To Adopt Exchange Rule 531(a), Reports, To Provide for a New “Liquidity Taker Event Report”); 94136 (February 2, 2022), 87 FR 7223 (February 8, 2022) (SR-EMERALD-2022-02) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 531 To Provide for the New Liquidity Taker Event Report— Complex Orders); 96762 (January 27, 2023), 88 FR 7114 (February 2, 2023) (SR-EMERALD-2023-02) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by MIAX Emerald, LLC To Amend Exchange Rule 531, Reports, Market Data Products and Services, To Provide for the New “Liquidity Taker Event Report—Resting Simple Orders”).

¹⁵ In sum, a “Complex Order” is “any order involving the concurrent purchase and/or sale of two or more different options in the same underlying security (the ‘legs’ or ‘components’ of the complex order), for the same account, in a conforming or non-conforming ratio....” See Exchange Rule 518(a)(5).

¹⁶ The “Simple Order Book” is the Exchange’s regular electronic book of orders and quotes. See Exchange Rule 518(a)(17). The “Strategy Book” is the Exchange’s electronic book of complex orders and complex quotes. See Exchange Rule 518(a)(19). The Strategy Book is organized by Complex Strategy in that

execute against such resting order¹⁷ within a certain timeframe.¹⁸ The content of each of the Reports is specific to the Recipient Member and each Liquidity Taker Event Report does not include any information related to any Member other than the Recipient Member.

The Exchange now proposes to: (i) amend the subparagraph (b)(2) of Exchange Rule 531 to adjust the timeframe from 200 microseconds to 400 microseconds for the Complex Order Report; and (ii) make a clarifying change to one of the footnotes in the prior filings that adopted the Simple Order Report, Complex Order Report, and Resting Simple Order Report.

Proposal to Amend Subparagraph (b)(2) of Exchange Rule 531 for the Complex Order Report to Adjust the Timeframe

The Exchange proposes to amend the subparagraph (b)(2) of Exchange Rule 531 to adjust the timeframe for the Complex Order Report. Currently, subparagraph (b)(2) provides that the Complex Order Report will include data set forth under Exchange Rule 531(b)(1)¹⁹ for executions and contra-side responses that occurred within 200 microseconds of the time the resting order was received by the Exchange. The Exchange now proposes to amend subparagraph (b)(2) to adjust the timeframe from 200 microseconds to 400 microseconds.

Accordingly, with the proposed change, subparagraph (b)(2) of Exchange Rule 531 will provide as follows:

individual orders for a defined Complex Strategy are organized together in a book that is separate from the orders for a different Complex Strategy. The term “Complex Strategy” means “a particular combination of components and their ratios to one another. New complex strategies can be created as the result of the receipt of a complex order or by the Exchange for a complex strategy that is not currently in the System. The Exchange may limit the number of new complex strategies that may be in the System at a particular time and will communicate this limitation to Members via Regulatory Circular.” See Exchange Rule 518(a)(6).

¹⁷ Only displayed orders are included in the Reports. The Exchange notes that it does not currently offer any non-displayed orders on its options trading platform.

¹⁸ A complete description of each of the Reports can be found in the prior rule filings to adopt the Reports. See supra note 14.

¹⁹ In general, subparagraph (b)(1) of Exchange Rule 531 includes information regarding (i) the resting order; (ii) execution of the resting order; and (iii) response(s) sent by the Recipient Member. See Exchange Rule 531(b)(1)(i)-(iii).

(2) Timeframe. The Liquidity Taker Event Report-Complex Orders will include data listed in paragraph (b)(1) of this Rule 531(b) for executions and contra-side responses that occurred within 400 microseconds of the time the resting order was received by the Exchange.

At the time the Exchange adopted the Complex Order Report, the Exchange believed that 200 microseconds was the appropriate timeframe as it was in line with the previously adopted timeframe for the Simple Order Report. In the Exchange's experience, 200 microseconds has not provided a sufficient amount of time for the System²⁰ to develop new Complex Strategies, which has resulted in the Complex Order Report missing some of a Recipient Member's Complex Order executions and contra-side responses. Accordingly, expanding the timeframe to 400 microseconds should allow for the intended information to be captured by the Complex Order Report.

Proposal to Amend a Footnote in Each of the Filings to Adopt the Reports (SR-EMERALD-2021-09, SR-EMERALD-2022-02, and SR-EMERALD-2023-02)

The Exchange proposes to make a clarifying change to one of the footnotes in each of the filings to adopt each Liquidity Taker Event Report. Each of the filings to adopt each Liquidity Taker Event Report contains a section that describes information in each report that corresponds to the Recipient Member. Each of the prior filings states that the "following information would be included in the [Simple Order Report, Complex Order Report, or Resting Simple Order Report] regarding response(s) [Complex Orders]²¹ 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 [Complex

²⁰ The term "System" means the automated trading system used by the Exchange for the trading of securities. See Exchange Rule 100.

²¹ For the Complex Order Report.

Order]²² sent by the Recipient Member, regardless of whether it executed or not; (C) size and type of each response [Complex Order]²³ submitted by Recipient Member; and (D) response reference number, which is a unique reference number attached to the response by the Recipient Member.²⁴ Further, each of the filings includes a footnote at the end of romanette “(B)” in the paragraph described above, which states as follows:

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.²⁵

The Exchange proposes to clarify the above footnote. Specifically, the Exchange proposes to replace “the resting order” with “the first response that executes against the resting order.” Accordingly, with the proposed change, the referenced footnotes in each of the filings to adopt the Reports would read as follows:

For purposes of calculating this duration of time, the Exchange will use the time the first response that executes against 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 purpose of the proposed change is to correct a non-substantive error in a footnote of each rule filing to adopt the Reports. The Exchange notes that the rule text in Exchange Rule 531 that describes each of the Reports was correctly adopted and does not require any change; only

²² For the Complex Order Report.

²³ For the Complex Order Report.

²⁴ See supra note 14. For the Simple Order Report, see Exchange Rule 531(a)(1)(iii); for the Complex Order Report, see Exchange Rule 531(b)(1)(iii); for the Resting Simple Order Report, see Exchange Rule 531(c)(1)(iii).

²⁵ See supra note 14, 86 FR 15759, at 15760, footnote 23; 87 FR 7223, at 7226, footnote 30; and 88 FR 7114, at 7116, footnote 20. The Exchange notes that footnote 30 in the Complex Order Report filing contains an additional sentence that states that the same information is included in the Simple Order Report filing. The remainder of that footnote is the same as the Simple Order Report and Resting Simple Order Report filings.

the footnote described above needs to be clarified. This change does not impact or alter the information provided to any Recipient Member.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,²⁶ in general, and furthers the objectives of Section 6(b)(5),²⁷ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

The Exchange believes that the proposal to expand the timeframe for the Complex Order Report would remove impediments to and perfect the mechanism of a free and open market and a national market system because it should provide enough time to ensure that the Complex Order Report captures all intended activity due to the time it takes for the System to create new Complex Strategies. The Exchange believes that this proposal facilitates transactions in securities because it would ensure the Complex Order Report includes the information the Complex Order Report was meant to capture. The Exchange designed the Complex Order Report for Members that are interested in gaining insight into latency in connection with Complex Orders that failed to execute against an order resting on the Exchange's Strategy Book by providing those Members data to analyze by how much time their Complex Order may have

²⁶ 15 U.S.C. 78f(b).

²⁷ 15 U.S.C. 78f(b)(5).

missed an execution against a contra-side order resting on the Strategy Book.²⁸ By providing this optional latency data to interested Members, it provides greater visibility into the latency of Members' incoming orders that they may use to optimize their models and trading patterns in an effort to yield better execution results by calculating by how much time their order may have missed an execution.²⁹ In turn, this should benefit other market participants who may experience better executions on the Exchange because those that use the Complex Order Report may recalibrate their trading models and then increase their trading on the Exchange and volume of liquidity removing orders.³⁰ The Exchange believes that this may lead to an increase in incoming liquidity removing orders resulting in higher execution rates for Members who primarily place resting orders on the Strategy Book. The Exchange believes that the proposed change to adjust the timeframe from 200 microseconds to 400 microseconds for the Complex Order Report will help facilitate transactions in securities by ensuring the Complex Order Report includes all latency data about Recipient Members' missed executions, as the Exchange originally intended when it adopted the Complex Order Report.

The Exchange believes that the proposed change to each of the footnotes described above for each Liquidity Taker Event Report protects investors and the public interest, as well as removes impediments to and perfects the mechanism of a free and open market and a national market system because the change is designed solely to correct non-substantive errors in prior filings, and none which have any impact on the Exchange's actual rule text for each of the

²⁸ See Securities Exchange Act Release No. 94136 (February 2, 2022), 87 FR 7223 (February 8, 2022) (SR-EMERALD-2022-02).

²⁹ Id.

³⁰ Id.

Reports. This proposed change does not impact or alter the operation of Exchange Rule 531 regarding the Reports.

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

The Exchange does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, as amended.

Intra-Market Competition

The Exchange believes that the proposed change to the timeframe for the Complex Order Report in the subparagraph (b)(2) of Exchange Rule 531 will not impose any burden on intra-market competition because it will ensure that the Complex Order Report captures all intended activity due to the time it takes for the System to create new Complex Strategies. The Exchange believes that this does not impose any burden on intra-market competition as it simply ensures that Recipient Members gain insight into latency in connection with Complex Orders that failed to execute against an order resting on the Exchange's Strategy Book by providing those Members the full scope of data that was intended to be captured by the Complex Order Report to analyze by how much time their Complex Order may have missed an execution against a contra-side order resting on the Strategy Book. The Exchange believes this does not impose any burden on intra-market competition as the adjusted timeframe should ensure all related activity that is intended to be included for each Recipient Member of the Complex Order Report is actually included. The Exchange notes that the proposed change would not result in any impact on the Exchange's System.

Inter-Market Competition

The Exchange believes the proposed rule change to adjust the timeframe for the Complex Order Report will not impose any burden on inter-market competition as the proposed change is not designed to address any competitive issue but rather is designed to ensure that the Complex

Order Report captures all intended activity due to the time it takes for the System to create new Complex Strategies.

Non-Substantive Corrections

The non-substantive corrections to the footnotes in prior filings to adopt each Liquidity Taker Event Report would not impact competition because such changes would not enhance or alter the Exchange's ability to compete, but rather, clarify a prior error which would reduce the potential for inadvertent investor confusion.

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 Act³¹ and Rule 19b-4(f)(6) thereunder.³²

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act³³ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)³⁴ permits the Commission to designate a shorter time if such action is consistent with the

³¹ 15 U.S.C. 78s(b)(3)(A).

³² 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

³³ 15 U.S.C. 78s(b)(3)(A).

³⁴ 17 CFR 240.19b-4(f)(6)(iii).

protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange stated that the adjusting the timeframe for the Complex Order Report will ensure that the Complex Order Report contains all intended data for Members that are interested in gaining insight into latency in connection with Complex Orders that failed to execute against an order resting on the Exchange's Strategy Book due to the time it takes for the System to create new Complex Strategies. The Exchange also stated that the proposed changes to the footnotes in the filings to adopt each of the Reports would correct non-substantive errors in prior filings. For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.³⁵

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 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:

³⁵ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Electronic Comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-EMERALD-2024-13 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-2024-13. 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 (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or

withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-EMERALD-2024-13 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁶

Sherry R. Haywood,

Assistant Secretary.

³⁶ 17 CFR 200.30-3(a)(12), (59).