

## SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-536, OMB Control No. 3235-0596]

### Submission for OMB Review; Comment Request; Extension: Rule 204A-1

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the “Commission”) has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

The title for the collection of information is “Rule 204A-1 (17 CFR 275.204A-1) under the Investment Advisers Act of 1940.” (15 U.S.C. 80b-1 *et seq.*) Rule 204A-1 (the “Code of Ethics Rule”) requires investment advisers registered with the SEC to (i) set forth standards of conduct expected of advisory personnel (including compliance with the federal securities laws); (ii) safeguard material nonpublic information about client transactions; and (iii) require the adviser’s “access persons” to report their personal securities transactions, including transactions in any mutual fund managed by the adviser. The Code of Ethics Rule requires access persons to obtain the adviser’s approval before investing in an initial public offering (“IPO”) or private placement. The Code of Ethics Rule also requires prompt reporting, to the adviser’s chief compliance officer or another person designated in the code of ethics, of any violations of the code. Finally, the Code of Ethics Rule requires the adviser to provide each supervised person with a copy of the code of ethics and any amendments, and require the supervised persons to acknowledge, in writing, their receipt of these copies. The purposes of the information collection requirements are to (i) ensure that advisers maintain codes of ethics applicable to their supervised persons; (ii) provide advisers with information about the personal securities transactions of their access persons for purposes of monitoring such transactions; (iii) provide advisory clients with information with which to evaluate advisers’ codes of ethics; and (iv) assist the Commission’s examination staff in assessing the

adequacy of advisers’ codes of ethics and assessing personal trading activity by advisers’ supervised persons.

The respondents to this information collection are investment advisers registered with the Commission. The Commission has estimated that compliance with rule 204A-1 imposes a burden of approximately 87 hours per adviser annually based on an average adviser having 60 access persons. Our latest data indicate that there were 14,705 advisers registered with the Commission. Based on this figure, the Commission estimates a total annual burden of 1,275,659 hours for this collection of information.

Rule 204A-1 does not require recordkeeping or record retention. The collection of information requirements under the rule is mandatory. The information collected pursuant to the rule is not filed with the Commission, but rather takes the form of communications between advisers and their supervised persons. Investment advisers use the information collected to control and assess the personal trading activities of their supervised persons. Responses to the reporting requirements will be kept confidential to the extent each investment adviser provides confidentiality under its particular practices and procedures. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view background documentation for this information collection at the following website: [www.reginfo.gov](http://www.reginfo.gov). Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice by July 6, 2022 to (i) [MBX.OMB.OIRA.SEC\\_desk\\_officer@omb.eop.gov](mailto:MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov) and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov).

Dated: May 31, 2022.

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-95005; File No. SR-EMERALD-2022-21]

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

May 31, 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 May 18, 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 Simple Maker (defined

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

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

below) rebates in all Tiers (defined below) for options transactions in Penny Classes (defined below) for executed Priority Customer<sup>3</sup> Origin orders. The Exchange originally filed this proposal on April 28, 2022 (SR-EMERALD-2022-17). On May 10, 2022, the Exchange withdrew SR-EMERALD-2022-17 and resubmitted this proposal (SR-EMERALD-2022-20). On May 18, 2022, the Exchange withdrew SR-EMERALD-2022-20 and resubmitted this proposal.

#### 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>4</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>5</sup> is solely

<sup>3</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.

<sup>4</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>5</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

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>6</sup> (as the numerator) expressed as a percentage of (divided by) Customer Total Consolidated Volume (“CTCV”) (as the denominator). CTCV is calculated as the total national volume cleared at The Options Clearing Corporation (“OCC”) in the Customer range in those classes listed on MIAX Emerald for the month for which fees apply, excluding volume cleared at the OCC in the Customer range executed during the period of time in which the Exchange experiences an “Exchange System Disruption”<sup>7</sup> (solely in the option classes of the affected Matching Engine).<sup>8</sup> In addition, the per contract transaction rebates and fees shall be applied retroactively to all eligible volume once the Tier has been reached by the Member. Members that place resting liquidity, *i.e.*, orders on the MIAX Emerald System, will be assessed the specified “maker” rebate or fee (each a “Maker”) and Members that execute against resting liquidity will be assessed the specified “taker” fee or rebate (each a “Taker”).<sup>9</sup> Members are also assessed lower transaction fees and smaller rebates for order executions in standard option classes in the Penny Interval Program<sup>10</sup> (“Penny Classes”) 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>6</sup> The term “Excluded Contracts” means any contracts routed to an away market for execution. See the Definitions Section of the Fee Schedule.

<sup>7</sup> The term “Exchange System Disruption” means an outage of a Matching Engine or collective Matching Engines for a period of two consecutive hour or more, during trading hours. See the Definitions Section of the Fee Schedule.

<sup>8</sup> A “Matching Engine” is a part of the MIAX Emerald electronic system that processes options orders and trades on a symbol-by-symbol basis. See the Definitions Section of the Fee Schedule.

<sup>9</sup> For a Priority Customer complex order taking liquidity in both a Penny Class and non-Penny Class against Origins other than Priority Customer, the Priority Customer order will receive a rebate based on the Tier achieved.

<sup>10</sup> See Securities Exchange Act Release No. 88993 (June 2, 2020), 85 FR 35145 (June 8, 2020) (SR-EMERALD-2020-05) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 510, Minimum Price Variations and Minimum Trading Increments, To

than for order executions in standard option classes which are not in the Penny Program (“non-Penny Classes”), for which Members will be assessed a higher transaction fees and larger rebates.

#### Proposal

First, the Exchange proposes to amend Section 1)a)i) of the Fee Schedule to amend the Simple Maker rebates in Tiers 1, 2 and 3 for options transactions in Penny Classes for executed Priority Customer Origin orders. Currently, the Exchange provides a Simple Maker rebate of (\$0.43) per contract for options transactions in most Penny Classes (excluding SPY, QQQ, and IWM) for executed Priority Customer Origin orders in Tiers 1, 2 and 3 per the rate table. The Exchange also provides a higher Simple Maker rebate of (\$0.45) per contract for options transactions in Penny Classes for SPY, QQQ and IWM, which is noted by the symbol “∇” following the tables of rebates and fees in Section 1)a)i) of the Fee Schedule.

The Exchange now proposes to amend symbol “∇” to modify the Simple Maker rebate for all options in Penny Classes for executed Priority Customer Origin orders in Tiers 1, 2 and 3 depending on whether the contra is an Affiliated Market Maker.<sup>11</sup> In particular, the Exchange proposes to provide a lower Simple Maker rebate of (\$0.37) per contract for options in all Penny Classes for executed Priority Customer Origin orders in Tiers 1, 2 and 3 when the contra is an Affiliated Market Maker. To show the difference in rebates depending on whether the contra is an Affiliated Market Maker, the Exchange proposes to amend the text in symbol “∇” to now read as follows: “The Simple Maker rebate in SPY, QQQ and IWM is (\$0.45) for Priority Customer Origin in Tiers 1, 2 and 3 when the contra is not an Affiliated Market Maker. The Simple Maker rebate in all Penny Classes is (\$0.37) for Priority Customer Origin in Tiers 1, 2 and 3 when the contra is an Affiliated Market Maker.” In summary, with the proposed changes, Priority Customer Origin orders in Tiers 1, 2 and 3 will receive (a) the current (\$0.43) per contract rebate for most Penny Classes (excluding SPY, QQQ, and IWM classes)

Conform the Rule to Section 3.1 of the Plan for the Purpose of Developing and Implementing Procedures Designed To Facilitate the Listing and Trading of Standardized Options) (the “Penny Program”).

<sup>11</sup> The term “Market Maker” refers to “Lead Market Maker” (“LMM”), “Primary Lead Market Maker” (“PLMM”) and “Registered Market Maker” (“RMM”), collectively. See the Definitions Section of the Fee Schedule and Exchange Rule 100.

when the contra is not an Affiliated Market Maker; (b) will continue to receive the current (\$0.45) per contract rebate for SPY, QQQ, and IWM classes when the contra is not an affiliated Market Maker; and (c) will receive the (\$0.37) per contract rebate in all Penny Classes when the contra is an affiliated Market Maker.

Next, the Exchange proposes to amend Section 1(a)(i) of the Fee Schedule to amend the Simple Maker rebate in Tier 4 for options transactions in Penny Classes for executed Priority Customer Origin orders. Currently, the Exchange provides a Simple Maker rebate of (\$0.53) for executed Priority Customer Origin orders in Tier 4 in options in Penny Classes if the contra is not an Affiliated Market Maker. If the contra is an Affiliated Market Maker, the Exchange provides a lower Simple Maker rebate of (\$0.43) for executed Priority Customer Origin orders in Tier 4 in options in Penny Classes.<sup>12</sup> Both the lower Simple Maker rebate of (\$0.43) and the rate table rebate of (\$0.53) depending on whether the contra is or is not an Affiliated Market Maker for executed Priority Customer Origin orders in Tier 4 in Penny Classes is denoted by the symbol “□” following the table of fees and rebates in Section 1(a)(i) of the Fee Schedule.

The Exchange now proposes to lower the Simple Maker rebate in Tier 4 for options transactions in Penny Classes for executed Priority Customer orders when the contra is an Affiliated Market Maker. Specifically, the Exchange proposes to lower the Simple Maker rebate for executed Priority Customer orders in options in Penny Classes in Tier 4 from (\$0.43) to (\$0.37) when the contra is an Affiliated Market Maker. To be clear, executed Priority Customer Origin order in options in Penny Classes in Tier 4 will continue to receive the current (\$0.53) per contract rebate when the contra is not an Affiliated Market Maker. The proposed change would be reflected in current footnote “□” for Penny Classes. Accordingly, the Exchange proposes to update footnote “□” to now read: “This Maker rebate is for executed Priority Customer Simple Orders when the contra is not an Affiliated Market Maker. When the

contra is an Affiliated Market Maker, this Maker rebate for executed Priority Customer Simple Orders will be (\$0.37).”

The purpose of adjusting the specified Simple Maker rebate is for business and competitive reasons. In order to attract order flow, the Exchange initially set its Maker rebates and Taker fees so that they were meaningfully higher/lower than other options exchanges that operate comparable maker/taker pricing models.<sup>13</sup> The Exchange now believes that it is appropriate to further adjust these specified Maker rebates so that they are more in line with other exchanges, but will still remain highly competitive such that they should enable the Exchange to continue to attract order flow and maintain market share.<sup>14</sup>

#### Implementation

The proposed changes are immediately effective.

#### 2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act<sup>15</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act,<sup>16</sup> in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange members and issuers and other persons using its facilities, and 6(b)(5) of the Act,<sup>17</sup> in that 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 facilitating transactions in securities, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest.

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO

revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>18</sup>

There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has a market share of more than approximately 13–14% of the equity options market.<sup>19</sup> Therefore, no exchange possesses significant pricing power. More specifically, as of May 17, 2022, the Exchange had a market share of approximately 3.68% of executed volume of multiply-listed equity options for the month of May 2022.<sup>20</sup>

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can discontinue or reduce use of certain categories of products and services, terminate an existing membership or determine to not become a new member, and/or shift order flow, in response to transaction fee changes. For example, on February 28, 2019, the Exchange’s affiliate, MIAX PEARL, LLC (“MIAX Pearl”), filed with the Commission a proposal to increase Taker fees in certain Tiers for options transactions in certain Penny classes for Priority Customers and decrease Maker rebates in certain Tiers for options transactions in Penny classes for Priority Customers (which fee was to be effective March 1, 2019).<sup>21</sup> MIAX Pearl experienced a decrease in total market share for the month of March 2019, after the proposal went into effect. Accordingly, the Exchange believes that the MIAX Pearl March 1, 2019 fee change, to increase certain transaction fees and decrease certain transaction rebates, may have contributed to the decrease in MIAX Pearl’s market share and, as such, the Exchange believes competitive forces constrain the Exchange’s, and other options exchanges, ability to set transaction fees and market participants can shift order flow based on fee changes instituted by the exchanges.

The Exchange believes its proposal to amend the Simple Maker rebates for options transactions in Penny Classes for Priority Customers is reasonable,

<sup>13</sup> See Securities Exchange Act Release No. 85393 (March 21, 2019), 84 FR 11599 (March 27, 2019) (SR-EMERALD-2019-15).

<sup>14</sup> See Cboe BZX Options Exchange Fee Schedule, under “Transaction Fees” (providing Customer rebates for Penny Program Securities ranging from \$0.25 to \$0.53); see also Nasdaq Stock Market, Options 7, Pricing Schedule, Section 2 Nasdaq Options Market—Fees and Rebates, note 2 (providing lower rates when the Participant is both the buyer and seller).

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

<sup>16</sup> 15 U.S.C. 78f(b)(4).

<sup>17</sup> 15 U.S.C. 78f(b)(1) and (b)(5).

<sup>18</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

<sup>19</sup> See “The Market at a Glance,” (last visited May 17, 2022), available at <https://www.miaxoptions.com/>.

<sup>20</sup> See *id.*

<sup>21</sup> See Securities Exchange Act Release No. 85304 (March 13, 2019), 84 FR 10144 (March 19, 2019) (SR-PEARL-2019-07).

<sup>12</sup> See Fee Schedule, Section 1(a)(i), note “□”. See Securities Exchange Act Release Nos. 94406 (March 14, 2022), 87 FR 15460 (March 18, 2022) (SR-EMERALD-2022-10) (lowering Simple Maker rebate in Tier 4 for options transactions in Penny Classes for executed Priority Customer orders when the contra is an Affiliated Market Maker from (\$0.49) to (\$0.43) and 89927 (September 21, 2020), 85 FR 60498 (September 25, 2020) (SR-EMERALD-2020-07) (establishing lower Priority Customer Tier 4 Simple Maker rebates in Penny Classes when the contra is an Affiliated Market Maker).

equitable and not unfairly discriminatory because all similarly situated market participants in the same Origin type are subject to the same tiered Maker rebates and Taker fees. The Exchange believes it is equitable and not unfairly discriminatory to reduce the Simple Maker rebates for Priority Customer orders in Penny Classes when the contra is an Affiliated Market Maker for business and competitive reasons because the Exchange initially set its Simple Maker rebates for such orders higher than certain other options exchanges that operate comparable maker/taker pricing models.<sup>22</sup> The Exchange now believes that it is appropriate to further decrease the specified Simple Maker rebates so that they are more in line with other exchanges, but will remain highly competitive such that they should enable the Exchange to continue to attract order flow and maintain market share.<sup>23</sup>

The Exchange believes that it is equitable and not unfairly discriminatory to continue to provide higher rebates for Priority Customer orders (even with the proposed changes) than to orders from origin types that are not Priority Customer. A Priority Customer is by definition not a broker or dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).<sup>24</sup> This limitation does not apply to participants on the Exchange whose behavior is substantially similar to that of market professionals, including orders from Non-MIAX Emerald Market Makers, Firm Proprietary/Broker-Dealer Origins, and Non-Priority Customers, who will generally submit a higher number of orders (many of which do not result in executions) than Priority Customers. Furthermore, the Exchange believes that even with the proposed changes, the rebates for Priority Customers will continue to encourage Members to send Priority Customer orders to the Exchange, which benefits all Exchange participants by providing more trading opportunities and tighter spreads.

The Exchange believes it is reasonable and equitable to reduce the Simple Maker rebates for Priority Customer orders in Penny Classes when the contra is an Affiliated Market Maker (versus when the contra is not an Affiliated Market Maker) because the Exchange already offers certain potential fee benefits to Members and their Affiliates

from their aggregated volume. For example, pursuant to Section 1(a)iii) of the Fee Schedule, the Tier applied for a Member and its Affiliates' Priority Customer Origin is solely determined by Method 3 (Priority Customer Maker volume). However, the Market Maker Origin receives the highest Tier based on any of the three application methods, including based on Tier achieved by their Affiliated Priority Customer Maker order flow. Thus, for example, if a Market Maker and its Affiliates naturally achieved Tier 1 from Market Maker Volume, the Exchange will also look at their Priority Customer order flow and if that Priority Customer order flow achieved higher Tiers (*i.e.*, Tier 4), the Market Maker and its Affiliates will receive the benefit of the Tier 4 rates based on their Priority Customer order flow. The Exchange also believes it is equitable and not unfairly discriminatory to continue to provide different rebates depending on whether the contra is or is not an Affiliated Market Maker for executed Priority Customer Origin orders because competing exchanges also provide different rates depending on whether the executing buyer and seller are affiliated.<sup>25</sup> Further, the Exchange's affiliate, Miami International Securities Exchange, LLC ("MIAX"), provides a similar pricing structure for certain complex order transactions for MIAX Members and their Affiliates that aggregate their order flow.<sup>26</sup> Accordingly, the Exchange believes it is reasonable, equitable, and not unfairly discriminatory to provide a lower rebate for certain Priority Customer Origin orders when the executing buyer and seller are the same Member or Affiliates.

Furthermore, the proposed decrease to the Simple Maker rebates for Priority Customers when the contra is an Affiliated Market Maker promotes just and equitable principles of trade, fosters cooperation and coordination with persons engaged in facilitating transactions in securities, and protects investors and the public interest, because even with the decrease, the Exchange's proposed Simple Maker rebates for such orders still remain highly competitive with certain other options exchanges offering comparable pricing models, and should enable the Exchange to continue to attract order flow and maintain market share.<sup>27</sup> The

<sup>25</sup> See, *e.g.*, Nasdaq Stock Market, Options 7, Pricing Schedule, Section 2 Nasdaq Options Market—Fees and Rebates, note 2 (providing lower rates when the Participant is both the buyer and seller).

<sup>26</sup> See MIAX Fee Schedule, Section 1(a)iii), notes "◆" and "■".

<sup>27</sup> See *supra* note 14.

Exchange believes that the amount of such rebates, with the proposed decrease, will continue to encourage those market participants to send Priority Customer orders to the Exchange.

#### *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.

#### *Intra-Market Competition*

The Exchange believes that the proposed changes to the specified Simple Maker rebates for the applicable market participants should continue to encourage the provision of liquidity that enhances the quality of the Exchange's market and increases the number of trading opportunities on the Exchange for all participants who will be able to compete for such opportunities. The proposed rule change should enable the Exchange to continue to attract and compete for Priority Customer order flow with other exchanges. The Exchange believes that even with the proposed changes, the rebates for Priority Customers will continue to encourage Members to send Priority Customer orders to the Exchange, which benefits all Exchange participants by providing more trading opportunities and tighter spreads. However, this competition does not create an undue burden on competition but rather offers all market participants the opportunity to receive the benefit of competitive pricing.

The Exchange believes that the pricing structure to provide different rebates depending on whether the contra is or is not an Affiliated Market Maker for executed Priority Customer Origin orders will not impose any undue burden on intra-market competition because the different rates apply equally to all Members that aggregate their order flow on the Exchange. Further, this pricing structure is not new or novel and has been in place at the Exchange, its affiliate, MIAX, and competing exchanges for years.<sup>28</sup>

#### *Inter-Market Competition*

The Exchange operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. There are currently 16 registered options exchanges competing for order flow.

<sup>28</sup> See *supra* notes 12, 25 and 26.

<sup>22</sup> See *supra* note 13.

<sup>23</sup> See *supra* note 14.

<sup>24</sup> See *supra* note 3.

Based on publicly-available information, and excluding index-based options, no single exchange has a market share of more than approximately 13–14% of the equity options market.<sup>29</sup> Therefore, no exchange possesses significant pricing power. More specifically, as of May 17, 2022, the Exchange had a market share of approximately 3.68% of executed volume of multiply-listed equity options for the month of May 2022.<sup>30</sup> Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity options order flow. In such an environment, the Exchange must continually adjust its transaction and non-transaction fees to remain competitive with other exchanges and to attract order flow. The Exchange believes that the proposed rule changes reflect this competitive environment because it modifies the Exchange's rebates in a manner that will allow the Exchange to remain competitive.

### 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,<sup>31</sup> and Rule 19b-4(f)(2)<sup>32</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-2022-21 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-2022-21. 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-EMERALD-2022-21, and should be submitted on or before June 27, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>33</sup>

**J. Matthew DeLesDernier,**  
Assistant Secretary.

[FR Doc. 2022-12013 Filed 6-3-22; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-95012; File No. SR-DTC-2022-002]

### Self-Regulatory Organizations; The Depository Trust Company; Order Approving the Proposed Rule Change To Provide Settlement Services for Transactions Entered Into Under the Proposed Securities Financing Transaction Clearing Service of the National Securities Clearing Corporation

May 31, 2022.

#### I. Introduction

On March 28, 2022, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-DTC-2022-002 ("Proposed Rule Change") 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> The Proposed Rule Change was published for comment in the **Federal Register** on April 18, 2022.<sup>3</sup> For the reasons discussed below, the Commission is approving the Proposed Rule Change.<sup>4</sup>

#### II. Description of the Proposed Rule Change

##### A. Background

DTC serves as a central securities depository providing, in part, custodial services for equity securities, which include the safekeeping, record keeping, book-entry transfer, and pledge of securities among its Participants.<sup>5</sup> The National Securities Clearing Corporation ("NSCC") provides clearing and settlement services for trades, including equity securities.<sup>6</sup> NSCC relies on an

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

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

<sup>3</sup> Securities Exchange Act Release No. 94692 (April 12, 2022), 87 FR 22971 (April 18, 2022) (SR-DTC-2022-002) ("Notice of Filing").

<sup>4</sup> Each capitalized term not otherwise defined herein has its respective meaning as set forth in DTC's rules, including, but not limited to, the Rules, By-Laws and Organization Certificate of DTC ("Rules"), the DTC Settlement Service Guide ("Settlement Guide"), and the Guide to the 2020 DTC Fee Schedule ("Fee Guide"), available at <http://www.dtcc.com/legal/rules-and-procedures.aspx>.

<sup>5</sup> See The Depository Trust Company, Disclosure Framework for Covered Clearing Agencies and Financial Market Infrastructures at 7, 9-10 (December 2021) available at [https://www.dtcc.com/-/media/Files/Downloads/legal/policy-and-compliance/DTC\\_Disclosure\\_Framework.pdf](https://www.dtcc.com/-/media/Files/Downloads/legal/policy-and-compliance/DTC_Disclosure_Framework.pdf).

<sup>6</sup> See National Securities Clearing Corporation, Disclosure Framework for Covered Clearing Agencies and Financial Market Infrastructures at 7-10 (December 2021), available at [https://www.dtcc.com/-/media/Files/Downloads/legal/policy-and-compliance/DTC\\_Disclosure\\_Framework.pdf](https://www.dtcc.com/-/media/Files/Downloads/legal/policy-and-compliance/DTC_Disclosure_Framework.pdf).

<sup>29</sup> See *supra* note 19.

<sup>30</sup> See *id.*

<sup>31</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>32</sup> 17 CFR 240.19b-4(f)(2).

<sup>33</sup> 17 CFR 200.30-3(a)(12).