information will be publicly available at no charge.[48]

The Exchange represents that all statements and representations made in the filing regarding: (1) The description of the portfolio holdings or reference assets; (2) limitations on portfolio holdings or reference assets; or (3) the applicability of Exchange listing rules specified in the rule filing constitute continued listing requirements for listing the Shares on the Exchange. In addition, the Exchange represents that the issuer must notify the Exchange of any failure by the Fund to comply with the continued listing requirements and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor [49] for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5–E(m).

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 4, is consistent with Section 6(b)(5) of the Act [50] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Solicitation of Comments on Amendment No. 4 to the Proposed Rule Change

Interested persons are invited to submit written views, data, and arguments concerning whether Amendment No. 4 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–NYSEArca–2018–83 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–NYSEArca–2018–83. 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–NYSEArca–2018–83 and should be submitted on or before September 12, 2019.

V. Accelerated Approval of the Proposed Rule Change, as Modified by Amendment No. 4

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 4, prior to the thirtieth day after the date of publication of notice of the filing of Amendment No. 4 in the **Federal Register**. The Commission notes that Amendment No. 4 clarified the permitted investments of the Fund and the application of NYSE Arca Rule 8.600–E, Commentary .01 to the Fund's investments. Amendment No. 4 also provided other clarifications and additional information to the proposed rule change. The changes and additional information in Amendment No. 4 assist the Commission in evaluating the Exchange's proposal and in determining that the listing and trading of the Shares is consistent with the Act. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[51] to approve the proposed rule change, as modified by Amendment No. 4, on an accelerated basis.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[52] that the proposed rule change (SR–NYSEArca–2018–83), as modified by Amendment No. 4 thereto, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[53]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–18074 Filed 8–21–19; 8:45 am]

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options; (F) the quantity of each security or other asset held as measured by (i) par value, (ii) notional value, (iii) number of shares, (iv) number of contracts, and (v) number of units; (G) maturity date; (H) coupon rate; (I) effective date; (J) market value; and (K) percentage weighting of the holding in the portfolio.

[48] *See* Amendment No. 4, *supra* note 9 at 19.

[49] The Commission notes that certain proposals for the listing and trading of exchange-traded products include a representation that the exchange will ''surveil'' for compliance with the continued listing requirements. *See, e.g.,* Securities Exchange Act Release No. 77499 (April 1, 2016), 81 FR 20428, 20432 (April 7, 2016) (SR–BATS–2016–04). In the context of this representation, it is the Commission's view that ''monitor'' and ''surveil'' both mean ongoing oversight of compliance with the continued listing requirements. Therefore, the Commission does not view ''monitor'' as a more or less stringent obligation than ''surveil'' with respect to the continued listing requirements.

[50] 15 U.S.C. 78f(b)(5).

[51] 15 U.S.C. 78s(b)(2).

[52] *Id.*

[53] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86699; File No. SR–EMERALD–2019–30]

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 520, Limitations on Orders

August 16, 2019.

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 August 7, 2019, 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 is filing a proposal to amend Exchange Rule 520, Limitations on Orders, to remove certain order entry restrictions prohibiting Electronic

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Exchange Members [3] from effectively operating as Market Makers [4] on the Exchange.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/emerald* 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 proposes to amend Exchange Rule 520, Limitations on Orders, to remove certain order entry restrictions prohibiting EEMs from effectively operating as Market Makers on the Exchange. The proposed rule change is similar to the recent filing submitted by the Exchange's affiliate, Miami International Securities Exchange, LLC (''MIAX'').[5] Currently, subsection (a)(1) of Exchange Rule 520 provides that the Exchange shall designate classes in which EEMs may enter into the System,[6] as principal or as agent, buy and sell limit orders in the same option series, for the account or accounts of the same or related beneficial owners. Currently, subsection (a)(2) of Exchange Rule 520 provides that, in all other classes, EEMs shall not enter into the System, as principal or agent, limit orders in the same options series, for the account or accounts of the same or related beneficial owners, in such a manner that the EEM or the beneficial owner(s) effectively is operating as a market maker by holding itself out as willing to buy and sell such option contract on a regular or continuous basis. Subsection (a)(2) further provides that in determining whether an EEM or beneficial owner effectively is operating as a Market Maker, the Exchange will consider, among other things: The simultaneous or near-simultaneous entry of limit orders to buy and sell the same option contract; the multiple acquisition and liquidation of positions in the same options series during the same day; and the entry of multiple limit orders at different prices in the same options series.

The Exchange now proposes to amend Exchange Rule 520(a) to delete current subsection (a)(1) and to modify current subsection (a)(2) such that, for all option classes, the restrictions prohibiting EEMs from effectively operating as Market Makers will only be applicable to Priority Customer Orders [7] since Priority Customer Orders have priority at any price over the bids and offers of non-Priority Customer Orders. Current Exchange Rule 520(a)(2) was adopted to limit the ability of Members that are not Market Makers to compete on preferential terms within the Exchange's System. Because Priority Customer Orders are provided with certain benefits such as priority of bids and offers, the Exchange believes that Priority Customer Orders should continue to be subject to the restrictions set out in current Exchange Rule 520(a)(2). However, because broker-dealer orders do not have priority over bids and offers of Market Makers, the Exchange no longer believes it is necessary to impose the restrictions set out in current Exchange Rule 520(a)(2) on the entry of broker-dealer orders. Similarly, because Voluntary Professional orders do not have priority over bids and offers of Market Makers, the Exchange does not believe it is necessary to impose the restrictions set out in current Exchange Rule 520(a)(2) on Voluntary Professional orders.[8]

Pursuant to this proposal, the Exchange will allow EEMs to enter buy and sell limit orders in the same options series for the account or accounts of the same beneficial owners, other than for the account(s) of Priority Customers, and will no longer need to designate specific classes for EEMs to engage in this type of activity. Accordingly, the Exchange believes that subsection (a)(1) of the current rule is no longer necessary and is redundant. Therefore, the Exchange proposes to delete subsection (a)(1). Similarly, the Exchange proposes to delete the beginning text of subsection (a)(2), which states ''In all other classes,'' as this rule text is no longer necessary in accordance with the Exchange's proposal to also delete subsection (a)(1).

Additionally, the Exchange proposes to insert text into the first sentence of current Exchange Rule 520(a)(2) to specify that Priority Customer Orders would continue to be subject to the restrictions of that subsection. The Exchange proposes to delete the text in the first sentence of current subsection (a)(2) regarding limit orders entered by EEMs as principal or agent to clarify that all Priority Customer Orders are

[3] The term ''Electronic Exchange Member'' or ''EEM'' means the holder of a Trading Permit who is not a Market Maker. Electronic Exchange Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[4] The term ''Market Makers'' refers to ''Lead Market Makers'', ''Primary Lead Market Makers'' and ''Registered Market Makers'' collectively. *See* Exchange Rule 100.

[5] *See* Securities Exchange Act Release No. 86534 (July 31, 2019), 84 FR 38316 (August 6, 2019(SR–MIAX–2019–33).

[6] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

[7] The term ''Priority Customer Order'' means an order for the account of a Priority Customer. *See* Exchange Rule 100. The term ''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). The number of orders shall be counted in accordance with Interpretation and Policy .01 of Exchange Rule 100.

[8] The Exchange notes that this rule change would only eliminate the restrictions of Exchange Rule 520(a)(2) in the manner proposed. Members would continue to remain subject to the requirements of MIAX Rule 303, incorporated by reference into the MIAX Emerald Rulebook (which requires Members to establish, maintain and enforce written policies and procedures reasonably designed, taking into consideration the nature of such Member's business, to prevent the misuse of material, nonpublic information by such Member or persons associated with such Member); MIAX Rule 301, Interpretation and Policy .02, also incorporated by reference into the MIAX Emerald Rulebook (which considers it conduct inconsistent with just and equitable principles of trade for any person associated with a Member who has knowledge of all material terms and conditions of: (a) An order and a solicited order, (b) an order being facilitated, or (c) orders being crossed, the execution of which are imminent, to enter, based on such knowledge, an order to buy or sell an option for the same underlying security as any option that is the subject of the order, or an order to buy or sell the security underlying such class, or any order to buy or sell any related instrument until (1) the terms of the order and any changes in the terms of the order of which the person associated with the Member has knowledge are disclosed to the trading crowd, or (2) the trade can no longer reasonably be considered imminent in view of the passage of time since the order was received); and Exchange Rule 520(b) (which provides that EEMs may not execute as principal orders they represent as agent unless (i) agency orders are first exposed on the Exchange for at least one (1) second, (ii) the EEM has been bidding or offering on the Exchange for at least one (1) second prior to receiving an agency order that is executable against such bid or offer, or (iii) the EEM utilizes the MIAX Emerald PRIME or the PRIME Solicitation Mechanism pursuant to Rule 515A); and Exchange Rule 520(c) (which provides that EEMs may not execute orders they represent as agent on the Exchange against orders solicited from Members and non-member broker-dealers to transact with such orders unless the unsolicited order is first exposed on the Exchange for at least one (1) second, or the EEM utilizes the MIAX Emerald PRIME or the PRIME Solicitation Mechanism pursuant to Rule 515A).

subject to the restrictions of that subsection. The Exchange also proposes to amend the hierarchical scheme in the first sentence of current subsection (a)(2) to insert romanettes ''(i)'' and ''(ii)'' to clarify the two conditions that must exist for the entry of Priority Customer Orders to be subject to the restrictions of current subsection (a)(2). The Exchange further proposes to delete the text in the first sentence of current subsection (a)(2) that states ''or related'' when referring to the account or accounts of the same beneficial owner. The purpose of this change is to remove outdated rule text and to align the Exchange's proposed rule with a competing options exchange that has a rule consistent with this proposal.[9] The Exchange believes this is a non-substantive change and is consistent with the Exchange's proposal to delete subsection (a)(1) of the rule. The Exchange does not believe that deleting the text ''or related'' will have any impact to Members as the remaining text continues to apply to ''the account or accounts of the same beneficial owner(s).'' The Exchange also proposes to capitalize the term ''Market Maker'' throughout current subsection (a)(2) to harmonize the rule text to the definition of Market Maker in Exchange Rule 100 and clarify that the rule text of current subsection (a)(2) refers to Market Makers on the Exchange. The Exchange proposes to delete the term ''Electronic Exchange Member'' in the second sentence of current subsection (a)(2) as the purpose of this proposed rule change is to remove the restrictions of current subsection (a)(2) as they currently pertain to EEMs effectively operating as Market Makers. Additionally, the Exchange proposes to replace the term ''option contract'' throughout current subsection (a)(2) with the term ''security'' or ''securities,'' where appropriately used in the singular or plural. The purpose of these proposed changes are to align the Exchange's proposed rule with competing options exchanges that have rules consistent with this proposal as well as with the Exchange's affiliate, MIAX.[10]

[9] *See* Cboe Exchange, Inc. Rules, CHAPTER VI. DOING BUSINESS ON THE EXCHANGE FLOOR, Rule 6.8, Prohibition Against Customers Functioning as Market-Makers; Securities Exchange Act Release No. 59700 (April 2, 2009), 67 FR 16246 (April 9, 2009)(SR–CBOE–2009–009) (Order Approving a Proposed Rule Change To Amend its Rules Prohibiting Members From Functioning as Market Makers).

[10] *See id.; see also* Nasdaq ISE, LLC, Options 3 Options Trading Rules, Section 22(a); Securities Exchange Act Release No. 63017 (September 29, 2010), 75 FR 61795 (October 6, 2010)(SR–ISE–2010–95); *see also* MIAX Rule 520(a).

Further, Exchange Rule 520(a)(2) currently provides that, in determining whether an EEM or beneficial owner effectively is operating as a Market Maker, the Exchange will consider, among other things: The simultaneous or near-simultaneous entry of limit orders to buy and sell the same option contract; the multiple acquisition and liquidation of positions in the same options during the same day; and the entry of multiple limit orders at different prices in the same options series. The Exchange proposes to remove the second condition pertaining to the multiple acquisition and liquidation of positions from its list of factors used for determining whether an EEM or beneficial owner is operating as a Market Maker. In light of the proliferation of day trading activity and the fact that such a prohibition does not exist on other markets,[11] the Exchange no longer believes this activity should be considered a factor in determining whether an EEM or beneficial owner is effectively acting as a Market Maker.

With the proposed changes, Exchange Rule 520(a) would be amended to state as follows:

> Electronic Exchange Members shall not enter into the System Priority Customer Orders in the same options series if (i) the orders are limit orders for the account or accounts of the same beneficial owner(s) and (ii) the limit orders are entered in such a manner that the beneficial owner(s) effectively is operating as a Market Maker by holding itself out as willing to buy and sell such securities on a regular or continuous basis. In determining whether a beneficial owner effectively is operating as a Market Maker, the Exchange will consider, among other things, the simultaneous or near-simultaneous entry of limit orders to buy and sell the same security and the entry of multiple limit orders at different prices in the same security.

Accordingly, the restrictions contained in current Exchange Rule 520(a)(2) against entering limit orders into the System would no longer be applicable to EEMs, except when entering Priority Customer Orders for account of the same beneficial owner. Further, current Exchange Rule 520(a)(1) would be deleted in its entirety.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act[12] in general, and furthers the objectives of Section 6(b)(5) of the Act[13] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in, securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes its proposal promotes just and equitable principles of trade, removes impediments to and perfects the mechanisms of a free and open market and a national market system, and in general, protects investors and the public interest by removing the prohibition on EEMs from entering limit orders in such a manner to effectively operate as Market Makers will more freely permit the entry of orders by EEMs, resulting in more orders on the Exchange. The increase in more orders on the Exchange should increase liquidity on the Exchange, which would benefit all market participants.

The Exchange believes its proposal to prohibit EEMs from entering Priority Customer Orders for the account of the same beneficial owner such that the beneficial owner is effectively operating as a Market Maker continues to promote just and equitable principles of trade because Priority Customer Orders have priority over the bids and offers of non-Priority Customer Orders. Because Priority Customers are provided with certain benefits such as priority of bids and offers, the Exchange believes its proposal to continue to subject Priority Customer Orders to the restrictions of current Exchange Rule 520(a)(2) will protect investors and the public interest. The Exchange believes its proposal to remove the restrictions of current subsection (a)(2) on EEMs entering broker-dealer and Voluntary Professional orders in such a manner that the EEM is effectively operating as a Market Maker promotes just and equitable principles of trade because those orders do not receive the same benefits as Priority Customer Orders, such as priority of bids and offers.

Similarly, the Exchange believes its proposal to delete subsection (a)(1) and specific text in subsection (a)(2) promotes just and equitable principles of trade, removes impediments to and perfects the mechanisms of a free and open market and a national market system, and in general, protects investors and the public interest by removing provisions of the rule text that no longer apply in light of the Exchange's proposal to allow EEMs to

[11] *See id.*

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

enter buy and sell limit orders in the same options series for the account or accounts of the same beneficial owners, other than for the account(s) of Priority Customers. Accordingly, the Exchange will no longer need to designate specific classes for EEMs to engage in this type of market making activity pursuant to subsection (a)(1). This proposed change will provide greater clarity to Members and the public regarding the Exchange's rules and it is in the public interest for rules to be accurate and concise so as to eliminate the potential for confusion.

The Exchange believes its proposal to remove the second condition pertaining to the multiple acquisition and liquidation of positions from its list of factors used for determining whether an EEM or beneficial owner is operating as a Market Maker promotes just and equitable principles of trade, removes impediments to and perfects the mechanisms of a free and open market and a national market system, and in general, protects investors and the public interest because of the proliferation of day trading activity and the fact that such a prohibition does not exist on other markets.[14]

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

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

Intra-Market Competition

Specifically, the Exchange believes that removing the prohibition on EEMs from entering limit orders such that EEMs may enter limit orders in such a manner to effectively operate as Market Makers will further promote competition on the Exchange, increase order flow and liquidity, leading to tighter, more efficient markets to the benefit of all market participants.

The Exchange believes that the prohibition on EEMs from entering Priority Customer Orders for the account of the same beneficial owner such that the beneficial owner is effectively operating as a Market Maker does not impose any burden on competition that is not necessary or appropriate because Priority Customers are provided with certain benefits such as priority of bids and offers that are not shared by other market participants.

Inter-Market Competition

The Exchange believes that its proposal to remove the prohibition on EEMs from entering limit orders such that EEMs may enter limit orders in such a manner to effectively operate as Market Makers will not impose any burden on intermarket competition not necessary or appropriate in furtherance of the purposes of the Act because of the proliferation of day trading activity and the fact that such a prohibition does not exist on other markets.[15]

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[16] and Rule 19b–4(f)(6) thereunder.[17]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[18] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[19] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposed rule change may become operative upon filing. Waiver of the operative delay would allow the Exchange to immediately harmonize with similar rules on other exchanges that allow EEMs to effectively operate as Market Makers. Therefore, 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 operative delay and designates the proposed rule change operative upon filing.[20]

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 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*. Please include File Number SR–EMERALD–2019–30 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–2019–30. 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

[14] *See supra* notes 9 and 10.

[15] *Id.*

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 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.

[18] 17 CFR 240.19b–4(f)(6).

[19] 17 CFR 240.19b–4(f)(6)(iii).

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

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–2019–30, and should be submitted on or before September 12, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Jill M. Peterson,

Assistant Secretary.

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BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86700; File No. SR–FINRA–2019–017]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change To Amend FINRA Rules 2210 (Communications With the Public) and 2241 (Research Analysts and Research Reports)

August 16, 2019.

I. Introduction

On June 20, 2019, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC or Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend FINRA Rules 2210 (Communications with the Public) and 2241 (Research Analysts and Research Reports) to conform to the requirements of the Fair Access to Investment Research Act of 2017 (''FAIR Act'').[3] The proposed rule change would eliminate the ''quiet period'' restrictions in FINRA Rule 2241 on publishing a research report or making a public appearance concerning a covered investment fund and would create a filing exclusion under FINRA Rule 2210 for covered investment fund research reports.

The proposed rule change was published for comment in the **Federal Register** on July 8, 2019.[4] The public comment period closed on July 29, 2019. The Commission received one comment letter in response to the Notice, supporting the proposed rule change.[5] This order approves the proposed rule change.

II. Description of the Proposed Rule Change[6]

The FAIR Act requires the SEC to propose and adopt rule amendments that would extend the current safe harbor under Securities Act of 1933 (''Securities Act'') Rule 139[7] to a ''covered investment fund research report'' upon terms and conditions that the SEC determines are necessary or appropriate in the public interest, for the protection of investors, and for the promotion of capital formation.[8] The FAIR Act directs that in implementing the safe harbor for covered investment fund research reports, the SEC is required to: (1) Meet specified requirements concerning the safe harbor's conditions, (2) prohibit any self-regulatory organization (''SRO'') from maintaining or enforcing specified rules regarding such reports, and (3) provide that a covered investment fund research report is not subject to the sales material filing requirements in section 24(b) of the Investment Company Act of 1940 (''Investment Company Act'').[9]

On November 30, 2018, the SEC adopted its final rules and rule amendments to implement the FAIR Act.[10] New Rule 139b expanded the Rule 139 safe harbor to include covered investment fund research reports, subject to specified conditions. Specifically, Rule 139b established a safe harbor for an unaffiliated broker or dealer participating in a securities offering of a covered investment fund to publish or distribute a covered investment fund research report. If the conditions in Rule 139b are satisfied, the publication or distribution of a covered investment fund research report would be deemed not to be an offer for sale or offer to sell the covered investment fund's securities for purposes of sections 2(a)(10) and 5(c) of the Securities Act. Rule 139b also adopted the FAIR Act's definitions of ''covered investment fund,'' ''covered investment fund research report,'' and ''research report,'' subject to minor non-substantive revisions.[11]

The SEC also adopted new Rule 24b–4 under the Investment Company Act, which specifies that a covered investment fund research report as defined in Rule 139b that concerns a fund registered under the Investment Company Act shall not be subject to section 24(b) of the Investment Company Act or any rules or regulations thereunder, unless the report is not subject to SRO rules relating to research reports, including rules governing communications with the public.[12] Section 24(b) of the Investment Company Act generally requires certain registered investment companies and their underwriters to file sales material concerning those funds with the SEC within 10 days of use.[13]

Changes to FINRA Rules Required by the FAIR Act

As discussed in the Notice, FINRA has interpreted the FAIR Act as requiring it to make two changes to FINRA Rules. Therefore, FINRA has proposed: (1) To amend Rule 2241 to eliminate the quiet period restrictions on publishing a research report or making a public appearance concerning a covered investment fund that is the subject of such a report; and (2) to amend Rule 2210 to create a filing exclusion for covered investment fund research reports that qualify for the Securities Act Rule 139b safe harbor.

FINRA Equity Research Rules

FINRA Rule 2241 governs the publication of research reports concerning equity securities and the analysts that produce such research. Rule 2241 requires members to establish, maintain and enforce written policies and procedures reasonably designed to identify and effectively manage conflicts of interest related to the preparation, content and distribution of research reports and public appearances by research

[21] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Fair Access to Investment Research Act of 2017, Public Law 115–66, 131 Stat. 1196 (2017).

[4] *See* Exchange Act Release No. 86257 (Jul. 1, 2018), 84 FR 32492 (Jul. 8, 2019) (File No. SR–FINRA–2019–017 (''Notice'').

[5] *See* Letter from the Dorothy Donohue, Deputy General Counsel, Investment Company Institute (''ICI''), dated July 29, 2019 (''ICI Letter''), available at *https://www.sec.gov.*

[6] The subsequent description of the proposed rule change is substantially excerpted from FINRA's description in the Notice. *See* Notice, 84 FR at 32492–32497.

[7] 17 CFR 230.139.

[8] *See* Section 2(a) of the FAIR Act.

[9] *See* Section 2(b) of the FAIR Act.

[10] *See* Securities Act Release No. 10580 (Nov. 30, 2018), 83 FR 64180 (Dec. 13, 2018) (the ''Release'').

[11] *See* 17 CFR 230.139b(c).

[12] *See* 17 CFR 270.24b–4.

[13] *See* 15 U.S.C. 80a–24(b). This filing requirement applies to sales material concerning any registered open-end management investment company, any registered unit investment trust (''UIT''), or any registered face-amount certificate company (''FACC'').