

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

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[FR Doc. 2021-05556 Filed 3-17-21; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91314; File No. SR-EMERALD-2021-08]

### Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 200, Trading Permits

March 12, 2021.

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> notice is hereby given that on March 1, 2021, MIAX Emerald, LLC (“MIAX Emerald” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I 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 amend Exchange Rule 200(d) requiring membership in another national securities exchange or association.

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 purpose of the proposed rule change is to amend Exchange Rule 200(d) requiring membership in another national securities exchange or association. In sum, Exchange Rule 200(d) currently requires that Trading Permit<sup>3</sup> holders be a member in another registered options exchange, other than the Exchange’s affiliates, the Miami International Securities Exchange, LLC (“MIAX”) or MIAX PEARL, LLC (“PEARL”), or the Financial Industry Regulatory Authority, Inc. (“FINRA”) where such other registered options exchange has not been designated by the Commission, pursuant to Rule 17d-1 under the Exchange Act, to examine Members for compliance with financial responsibility rules. Exchange Rule 200(d), therefore, does not allow a Trading Permit Holder that is not a FINRA member<sup>4</sup> to satisfy this requirement by being a member of a registered equities exchange. The Exchange believes that requiring membership in another registered options exchange is unnecessarily too restrictive and is also not in line with similar membership requirements at other exchanges.<sup>5</sup> Therefore, to enable more broker-dealers to become Trading Permit holders, the Exchange proposes to amend Exchange Rule 200(d) to require membership in a registered national securities exchange, rather than only registered options exchanges.<sup>6</sup> Exchange Rule 200(d) will continue to require Trading Permit holders to be FINRA members where the registered national securities exchange that they maintain membership is not designated

<sup>3</sup> The term “Trading Permit” means a permit issued by the Exchange that confers the ability to transact on the Exchange. See Exchange Rule 100.

<sup>4</sup> A Trading Permit Holder that does not transact business with the public is not required to become a FINRA member. Section 15(b)(8) of the Act that requires members that transact business with the public to be a member of FINRA. 15 U.S.C. 78o(b)(8).

<sup>5</sup> See Cboe EDGX Exchange, Inc. (“EDGX”) Rule 2.5(a)(4), Cboe EDGA Exchange, Inc. (“EDGA”) Rule 2.5(a)(4), Cboe BZX Exchange, Inc. (“BZX”) Rule 2.5(a)(4), Cboe BYX Exchange, Inc. (“BYX”), collectively with EDGX, EDGA, and BZX, the “Cboe Equity Exchanges”) Rule 2.5(a)(4), MEMX LLC (“MEMX”) Rule 2.5(a)(4), Investors Exchange, Inc. (“IEX”) Rule 2.130(a), Long Term Stock Exchange, Inc. (“LTSE”) Rule 2.130 and BOX Exchange LLC (“BOX”) Rule 2020(a).

<sup>6</sup> The Exchange also propose to include the phrase “or FINRA” at the end of Exchange Rule 200(d)’s title.

by the Commission to examine members for compliance with financial responsibility rules pursuant to Rule 17d-1 of the Exchange Act.<sup>7</sup>

##### 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,<sup>8</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>9</sup> in particular, because 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 mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change would 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 by expanding the number of registered brokers-dealers that would be eligible to become Trading Permit holders and trade on the Exchange, while maintaining high regulatory standards and a comprehensive regulatory regime with respect to such firms. Exchange Rule 200(d) was too restrictive by limiting membership in another registered national securities exchange to only registered options exchanges and, therefore, unnecessarily precluded broker-dealers who were members of a registered equities exchange from becoming Trading Permit holders. As mentioned above, Exchange Rule 200(d) will continue to require Trading Permit holders to be FINRA members where the registered national securities exchange that they maintain membership is not designated by the Commission to examine members for compliance with financial responsibility rules pursuant to Rule 17d-1 of the Exchange Act. This will ensure that those Trading Permit holders that are not FINRA members maintain membership at a registered options or equities exchange that may be

<sup>7</sup> Rule 17d-1 of the Act authorizes the Commission to name a single Self-Regulatory Organization (“SRO”) as the Designated Examining Authority (“DEA”) to examine members of more than one SRO (“common member”) for compliance with the financial responsibility requirements imposed by the Exchange Act, or by Commission or SRO rules. 17 CFR 240.17d-1. The Exchange does not currently act as the DEA for any Trading Permit holder.

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> 17 CFR 200.30-3(a)(57).

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

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

designated as their DEA by the Commission. The proposed rule change would also contribute to perfecting the mechanism of a free and open market and a national market system, which outcomes are also consistent with the protection of investors and the public interest, by aligning the Exchange's membership requirements more closely with that of its affiliate, PEARL,<sup>10</sup> and those of other national securities exchanges.<sup>11</sup>

The proposed rule change would also not unfairly discriminate between or among market participants because both current and prospective Trading Permit holders would be subject to the rule. All Trading Permit holders would be regulated in the same manner by the Exchange should they be a member of another registered national options or equities exchange.

#### *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. The proposed rule change is designed to enhance competition by expanding the number of registered brokers-dealers that would be eligible to become Trading Permit holders and trade on the Exchange by aligning Exchange Rule 200(d) with that of other national securities exchanges.<sup>12</sup>

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>13</sup> and Rule 19b-4(f)(6) thereunder.<sup>14</sup>

<sup>10</sup> See Securities Exchange Act Release No. 91146 (February 17, 2021), 86 FR 11022 (February 23, 2021) (SR-PEARL-2021-03).

<sup>11</sup> See *supra* note 5.

<sup>12</sup> *Id.*

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 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

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>15</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>16</sup> 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 asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative immediately. The Exchange states that waiver of the operative delay is consistent with the protection of investors and the public interest because it will allow the Exchange to immediately expand the number of registered broker-dealers that would be eligible to become Trading Permit holders on the Exchange and align its membership requirements more closely with those of other national securities exchanges.<sup>17</sup> For this reason, and because the proposal does not raise any novel regulatory issues, 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.<sup>18</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule 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:

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.

<sup>15</sup> 17 CFR 240.19b-4(f)(6).

<sup>16</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>17</sup> See *supra* note 5.

<sup>18</sup> 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).

#### *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-2021-08 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-2021-08. 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-2021-08 and should be submitted on or before April 8, 2021.

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

**J. Matthew DeLesDernier,**  
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[FR Doc. 2021-05558 Filed 3-17-21; 8:45 am]

**BILLING CODE 8011-01-P**

<sup>19</sup> 17 CFR 200.30-3(a)(12).