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SECURITIES AND EXCHANGE COMMISSION  
[Release No. 34-85225; File No. SR-EMERALD-2019-06]

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Exchange Rule 510, Minimum Price Variations and Minimum Trading Increments to Extend the Penny Pilot Program

March 1, 2019

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 February 19, 2019, MIAX Emerald, LLC (“MIAX Emerald” or the “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 510, Minimum Price Variations and Minimum Trading Increments, Interpretations and Policies .01 to change the date on which the pilot program for the quoting and trading of certain options in pennies is scheduled to expire.

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

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

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

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

Background

MIAX Emerald plans to commence operations as a national securities exchange registered under Section 6 of the Act<sup>3</sup> on March 1, 2019. As described more fully in MIAX Emerald's Form 1 application,<sup>4</sup> the Exchange is an affiliate of Miami International Securities Exchange, LLC ("MIAX Options") and MIAX PEARL, LLC ("MIAX PEARL"). MIAX Emerald Rules, in their current form, were filed as Exhibit B to its Form 1 on August 16, 2018, and at that time, the above mentioned rules, were substantially similar to the rules of the MIAX Options exchange. In the time between when the Exchange filed its Form 1 and the time the Exchange received its approval order, MIAX Options made changes to its rule book. In order to ensure consistent operation of both MIAX Emerald and MIAX Options by having consistent rules, the Exchange proposes to amend MIAX Emerald Rule 510, as described below.

Proposal

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<sup>3</sup> 15 U.S.C. 78f.

<sup>4</sup> See Securities Exchange Act Release No. 84891 (December 20, 2018), 83 FR 67421 (December 28, 2018) (File No. 10-233) (order approving application of MIAX EMERALD, LLC for registration as a national securities exchange).

Once operational, the Exchange will be a participant in an industry-wide pilot program that provides for the quoting and trading of certain option classes in penny increments (the “Penny Pilot Program” or “Program”). The Penny Pilot Program allows the quoting and trading of certain option classes in minimum increments of \$0.01 for all series in such option classes with a price of less than \$3.00; and in minimum increments of \$0.05 for all series in such option classes with a price of \$3.00 or higher. Options overlying the PowerShares QQQ™ (“QQQ”), SPDR® S&P 500® ETF (“SPY”), and iShares® Russell 2000 ETF (“IWM”), however, are quoted and traded in minimum increments of \$0.01 for all series regardless of the price. The Penny Pilot Program was initiated at the then existing option exchanges in January 2007<sup>5</sup> and currently includes more than 300 of the most active option classes. Rule 510, Interpretations and Policies .01, currently states that the Penny Pilot Program is scheduled to expire on December 31, 2018. The purpose of the proposed rule change is to modify the expiration date set forth in Rule 510, to match the most recent expiration date, as updated by the other options exchanges, including MIAX Options.<sup>6</sup>

In addition to changing the date on which the Penny Pilot Program will expire, which will be June 30, 2019, the Exchange proposes to make one additional change to the Rule. Currently, Interpretations and Policies .01, states that the Exchange will replace any Penny Pilot issues that have been delisted with the next most actively traded multiply listed option classes that are not

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<sup>5</sup> See Securities Exchange Act Release Nos. 55154 (January 23, 2007), 72 FR 4743 (February 1, 2007) (SR-CBOE-2006-92); 55161 (January 24, 2007), 72 FR 4754 (February 1, 2007) (SR-ISE-2006-62); 54886 (December 6, 2006), 71 FR 74979 (December 13, 2006) (SR-Phlx-2006-74); 54590 (October 12, 2006), 71 FR 61525 (October 18, 2006) (SR-NYSEArca-2006-73); and 54741 (November 9, 2006), 71 FR 67176 (November 20, 2006) (SR-Amex-2006-106).

<sup>6</sup> See Securities Exchange Act Release No. 84864 (December 19, 2018), 83 FR 66778 (December 27, 2018) (SR-MIAX-2018-38) (extending the Penny Pilot Program from December 31, 2018 to June 30, 2019).

yet included in the Penny Pilot Program, and that the replacement issues will be selected based on trading activity in the previous six months. Such option classes will be added to the Penny Pilot Program on the second trading day following July 1, 2018.<sup>7</sup> However, this date has expired and although the Exchange intends to adhere to this practice for the duration of the Penny Pilot Program, the new date on which replacement issues may be added to the Penny Pilot Program would have been the second trading day following January 1, 2019, which has already passed. Therefore, the Exchange proposes to delete the sentence which currently states that “[t]he replacement classes may be added to the penny pilot on the second trading day following July 1, 2018,” and not replace the current date of July 1, 2018 with the date of January 1, 2019. The Exchange notes that this would create a difference between the rule text of MIAX Emerald and that of MIAX Options,<sup>8</sup> however, in practice there would be no difference as the second trading day following January 1, 2019 has already passed.

## 2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act<sup>9</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>10</sup> 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 facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a

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<sup>7</sup> The month immediately preceding a replacement class’s addition to the Pilot Program (i.e., December) is not used for purposes of the six-month analysis. For example, a replacement added on the second trading day following January 1, 2019, will be identified based on trading activity from June 1, 2018, through November 30, 2018.

<sup>8</sup> See supra note 6.

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

<sup>10</sup> 15 U.S.C. 78f(b)(5).

free and open market and a national market system and, in general, to protect investors and the public interest.

In particular, the proposed rule change, which modifies the expiration date of the Penny Pilot Program set forth in Rule 510, to match the most recent expiration date, as updated by the other options exchanges, will allow the Exchange to participate in a program that has been viewed as beneficial to traders, investors and public customers and viewed as successful by the other options exchanges participating in it.

Additionally, the Exchange believes that although MIAX Emerald rules may, in certain instances, intentionally differ from MIAX Options rules, the proposed changes will promote uniformity with MIAX Options with respect to rules that are intended to be identical. The Exchange believes that it will reduce the potential for confusion by its members that are also members of MIAX Options with respect to rules that are intended to be identical.

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

MIAX Emerald 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. Specifically, the Exchange believes that, by modifying the expiration date of the Penny Pilot Program to match the most recent expiration date, as updated by the other options exchanges, the proposed rule change will allow for analysis of the Penny Pilot Program and a determination of how the Program should be structured in the future. The Exchange believes that the proposed rule change, which harmonizes its rules with recent rule changes adopted by MIAX Options will reduce the regulatory burden placed on market participants engaged in trading activities across different markets. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace, facilitating investor protection, and fostering a competitive environment.

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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> and Rule 19b-4(f)(6)<sup>12</sup> thereunder. 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 after the date of the filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to 19(b)(3)(A) of the Act<sup>13</sup> and Rule 19b-4(f)(6)<sup>14</sup> thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>15</sup> normally does not become operative prior to 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>16</sup> the Commission may 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 proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

<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) requires a self-regulatory organization to give the Commission written notice of its intent to file 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).

of investors and the public interest because doing so will allow the Pilot Program to continue without interruption in a manner that is consistent with the Commission's prior approval of the extension and expansion of the Pilot Program.<sup>17</sup> Accordingly, the Commission designates the proposed rule change as operative upon filing with the Commission.<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 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 e-mail [to rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-

EMERALD-2019-06 on the subject line.

##### Paper comments:

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<sup>17</sup> See Securities Exchange Release No. 61061 (November 24, 2009), 74 FR 62857 (December 1, 2009) (SR-NYSEArca-2009-44).

<sup>18</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

- 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-2019-06. This file number should be included on the subject line if e-mail 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 Web site (<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 20549-1090, on official business days between the hours of 10:00 am and 3:00 pm. 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-2019-06 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

Eduardo A. Aleman  
Deputy Secretary

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

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