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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-86183; File No. SR-EMERALD-2019-19]

Self-Regulatory Organizations; MIAX Emerald, LLC; Order Approving a Proposed Rule Change to Amend Exchange Rule 515A Concerning the PRIME Price Improvement and Solicitation Mechanisms and Rules 516 and 517 Regarding Post-Only Orders and Post-Only Quotes

June 24, 2019

I. Introduction

On April 29, 2019, MIAX Emerald, LLC (“MIAX Emerald” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)¹ and Rule 19b-4 thereunder,² a proposal to address Post-Only trading interest in the context of the MIAX Emerald Price Improvement Mechanism (“PRIME” or “PRIME Auction”). The proposed rule change was published for comment in the Federal Register on May 10, 2019.³ The Commission did not receive any comment letters on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

PRIME is a process by which an Exchange member may submit for execution an order it represents as agent (“Agency Order”) against principal interest or solicited interest.⁴ Currently,

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 85783 (May 6, 2019), 84 FR 20665 (May 10, 2019) (“Notice”).

⁴ See Exchange Rule 515A(a).

resting Post-Only Orders⁵ and Post-Only Quotes⁶ (collectively referred to as “Post-Only OQs”) may not participate in a PRIME Auction and are rejected if received during a PRIME Auction.⁷ Additionally, if trading interest on the MIAX Emerald Book (“Book”)⁸ is subject to the Managed Interest Process,⁹ or there is a Post-Only OQ on the Book on the same side of the market as the Agency Order, the Agency Order will be rejected by the System¹⁰ and a PRIME Auction will not commence.¹¹

A. Post-Only OQs Resting on the Same Side as the Agency Order

With respect to the initiation of a PRIME Auction, the Exchange proposes that for both single price submissions and auto-match, if the EBBO¹² on the same side of the market as the Agency Order represents a limit order on the Book or a Post-Only Quote subject to the POP

⁵ “Post-Only Orders” are orders that, by their terms, will not remove liquidity. See Exchange Rule 516(m).

⁶ “Post-Only Quotes” are quotes that, by their terms, will not remove liquidity. See Exchange Rule 517(a)(1)(i).

⁷ See Exchange Rule 515A(a)(1)(iv).

⁸ The term “Book” means the electronic book of buy and sell orders and quotes maintained by the Exchange’s system. See Exchange Rule 100.

⁹ See Exchange Rule 515(c)(1)(ii).

¹⁰ The term “System” means the automated trading system used by the Exchange for the trading of securities. See Exchange Rule 100.

¹¹ See Exchange Rule 515A(a).07. The Exchange proposes to delete current Interpretation and Policy .07 and adopt new Interpretation and Policy .08 to Rule 515A, to state that if trading interest exists on the MIAX Emerald Book that is subject to the Managed Interest Process pursuant to Rule 515(c) or the Post-Only price process (“POP Process”) pursuant to Rule 515(i) for the option on the same side of the market as the Agency Order, then the Agency Order will be rejected by the System prior to initiating a PRIME Auction or Solicitation Auction. The proposed new Interpretation and Policy .08 makes no substantive changes but simply clarifies that a Post-Only OQ may be handled under the Managed Interest Process or the POP Process.

¹² The term “EBBO” means the best bid or offer on the Exchange. See Exchange Rule 100.

Process,¹³ the Agency Order must be stopped at a price that is at least \$0.01 increment better than the Book price.¹⁴

B. Post-Only OQs Received During the PRIME Auction

As described in more detail in the Notice,¹⁵ the Exchange proposes to no longer reject Post-Only OQs that it receives when the System is conducting a PRIME Auction. Instead, the System will accept Post-Only OQs received during a PRIME Auction and will treat them in the same manner as other unrelated interest received during a PRIME Auction.¹⁶ Accordingly, Post-Only OQs now will participate in a PRIME Auction and be eligible to execute against the Agency Order.¹⁷

C. Automatic Execution of Agency Order Against Opposite Side Post-Only Interest on the Book

¹³ See Exchange Rule 515(i)(3).

¹⁴ See Exchange Rule 515A(a)(2)(i)(A).

¹⁵ See Notice, *supra* note 3.

¹⁶ Post-Only Orders and Post-Only Quotes, by their terms, do not remove liquidity. Under the proposal, a PRIME Auction may conclude earlier than the end of the Request for Responses (“RFR”) period upon receipt by the System of an unrelated order, including a Post-Only Order that is received: (i) on the opposite side of the market from the RFR responses, that is marketable against either the NBBO, the initiating price, or the RFR responses; or (ii) on the same side of the market as the RFR responses, that is marketable against the NBBO. See Exchange Rule 515A(a)(2)(ii)(B) and (C). A PRIME Auction also may conclude early if the System receives an unrelated limit order, including a Post-Only Order, on the opposite side of the market from the Agency Order that improves any RFR response. See Exchange Rule 515A(a)(2)(ii)(D). Additionally, a PRIME Auction would conclude for any of the other reasons provided for in Rule 515A. See Exchange Rule 515A(a)(2)(ii). If the same-side Post-Only interest remains on the Book at the conclusion of a PRIME Auction, it will be subject to the POP Process. See Notice, *supra* note 3, at 20667.

¹⁷ To implement this change, the Exchange proposes to amend Exchange Rules 515A(a)(1)(iv) (PRIME), 516(m) (Order Types Defined) and 517(a)(1)(i) (Quote Types Defined) to delete sentences from the rule text stating that Post-Only Quotes may not participate in a PRIME Auction and are rejected if received during a PRIME Auction.

Next, the Exchange proposes, before commencing a PRIME Auction, to have trading interest on the opposite side of the market as the Agency Order that is subject to the POP Process automatically execute against the Agency Order if the execution would be at a price \$0.01 inside the EBBO.¹⁸ For an Agency Order to buy, the execution price would need to be \$0.01 higher than the EBB, and for an Agency Order to sell, the execution price would need to be \$0.01 lower than the EBO. If the Agency Order was not fully executed after the trading interest subject to the POP Process is fully exhausted, then a PRIME Auction would be initiated for the balance of the Agency Order. Further, with respect to any portion of an Agency Order that is automatically executed against interest subject to the POP Process, the exposure requirements contained in Exchange Rule 520(b)¹⁹ and (c)²⁰ would not be satisfied just because the member utilized the PRIME.²¹ A similar provision currently exists for interest in the Book that is subject to the Managed Interest Process pursuant to Exchange Rule 515(c), and the proposed rule change extends this functionality to interest that is subject to the POP Process.

D. cPRIME Auction

Currently, a cPRIME Agency Order will be rejected at the time of receipt if any component of the strategy involves an option that is subject to the Managed Interest Process

¹⁸ See Exchange Rule 515A Interpretation and Policy .07.

¹⁹ Exchange Rule 520(b) provides that members may not execute as principal orders they represent as agent unless (i) agency orders are first exposed on the Exchange for at least one second, (ii) the member has been bidding or offering on the Exchange for at least one second prior to receiving an agency order that is executable against such bid or offer, or (iii) the member utilizes the PRIME.

²⁰ Exchange Rule 520(c) provides that members may not execute orders they represent as agent on the Exchange against order 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 second, or the member utilizes the PRIME or PRIME Solicitation Mechanism.

²¹ See Notice, supra note 3, at 20666 (for examples illustrating how Post-Only interest resting on the Book is handled).

described in Rule 515(c)(1)(ii).²² The Exchange now proposes to also reject a cPRIME Agency Order at the time of receipt if any component of the strategy involves an option that is subject to Exchange Rule 515(d) (which describes the management process for Market Maker order and quotes) or the POP Process.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act,²³ and the rules and regulations thereunder applicable to a national securities exchange.²⁴ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,²⁵ which requires, among other things, that the rules of a national securities exchange be designed 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 and that the rules are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Regarding PRIME Auction eligibility and the stop price when considering existing interest resting on the Book, the proposal provides that Post-Only Quotes will now also be considered (in addition to considering resting limit orders) in determining the Auction's Agency Order stop price, which must be at least \$0.01 better than the Book price if the EBBO represents a limit order on the Book or a Post-Only Quote subject to the POP Process on the same side as the Agency Order. The Commission finds that, as revised, these PRIME eligibility requirements are consistent with the Act in that they protect the priority of resting limit orders on the Book

²² See Exchange Rule 515A Interpretation and Policy .12(b)(iii).

²³ 15 U.S.C. 78f.

²⁴ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²⁵ 15 U.S.C. 78f(b)(5).

when members seek to initiate a PRIME Auction and thus they are consistent with the protection of investors and the public interest.

The Commission finds that the proposal to permit participation in a PRIME Auction by incoming Post-Only OQs received during a PRIME Auction may increase the potential liquidity available to trade with an Agency Order during a PRIME Auction and thus provide additional opportunities for price improvement to the Agency Order, thereby removing impediments to and perfecting the mechanism of a free and open market in a manner consistent with the protection of investors. The Commission notes that the participation of Post-Only interest in the PRIME Auction is limited. Specifically, Post-Only OQs may participate in a PRIME Auction if they are received during the RFR period, though they may not be submitted as responses to an RFR.²⁶ Further, Post-Only OQ may not participate in PRIME as an Agency Order, principal interest, or solicited interest.²⁷ The proposal to permit resting trading interest on the Book subject to the POP Process on the opposite side as the Agency Order to execute automatically against the Agency Order (before the System initiates a PRIME Auction) at a price \$0.01 inside the EBBO is designed to accommodate within the PRIME process the presence of a preexisting, resting Post-Only OQ on the opposite side of the Agency Order, while allowing members to submit customer interest to the PRIME mechanism for potential price improvement.²⁸ As such, this provision is designed to provide a further opportunity for a liquidity-taking Agency Order to receive both a timely execution and meaningful price improvement. As such, it is designed in a manner that is consistent with the protection of investors.

²⁶ See Exchange Rule 515A(a)(2)(i)(D) (stating RFR responses shall be an Auction-or-Cancel (“AOC”) order or an AOC eQuote).

²⁷ See Exchange Rule 515A(a)(1)(iv).

²⁸ See also supra notes 19 and 20 (concerning the applicability of exposure requirements).

Finally, the Commission finds that the proposal to reject a cPRIME Agency Order, and thus not commence a PRIME Auction, if any component of the complex order on the Book is subject to the POP Process is substantially similar to the current rule that provides that a cPRIME Agency Order will be rejected at the time of receipt if any component is subject to the Managed Interest Process. The Exchange intends for this provision to protect the integrity of the Book. The Commission finds that extending this protection to include interest subject to the POP Process is designed to support efficient trading in both the simple market and the complex market and remove impediments to and perfect the mechanism of a free and open market.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²⁹ that the proposed rule change (SR-EMERALD-2019-19) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁰

J. Lynn Taylor,

Assistant Secretary.

²⁹ 15 U.S.C. 78s(b)(2).

³⁰ 17 CFR 200.30-3(a)(12).

