

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. Please include File Number SR-MIAX-2023-17 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-MIAX-2023-17. 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. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR-MIAX-2023-17 and should be submitted on or before May 16, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵⁷

Sherry R. Haywood,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-508, OMB Control No. 3235-0565]

Proposed Collection; Comment Request; Extension: Rule 482

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.*) ("Paperwork Reduction Act"), the Securities and Exchange Commission (the "Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget ("OMB") for extension and approval.

Like most issuers of securities, when an investment company ("fund")¹ offers its shares to the public, its promotional efforts become subject to the advertising restrictions of the Securities Act of 1933 (15 U.S.C. 77) (the "Securities Act"). In recognition of the particular problems faced by funds that continually offer securities and wish to advertise their securities, the Commission has previously adopted advertising safe harbor rules. The most important of these is rule 482 (17 CFR 230.482) under the Securities Act, which, under certain circumstances, permits funds to advertise investment performance data, as well as other information. Rule 482 advertisements are deemed to be "prospectuses" under Section 10(b) of the Securities Act (15 U.S.C. 77j(b)).

Rule 482 contains certain requirements regarding the disclosure that funds are required to provide in qualifying advertisements. These requirements are intended to encourage the provision to investors of information that is balanced and informative, particularly in the area of investment performance. For example, a fund is

required to include disclosure advising investors to consider the fund's investment objectives, risks, charges and expenses, and other information described in the fund's prospectus, and highlighting the availability of the fund's prospectus. In addition, rule 482 advertisements that include performance data of open-end funds or insurance company separate accounts offering variable annuity contracts are required to include certain standardized performance information, information about any sales loads or other nonrecurring fees, and a legend warning that past performance does not guarantee future results. Such funds including performance information in rule 482 advertisements are also required to make available to investors month-end performance figures via website disclosure or by a toll-free telephone number, and to disclose the availability of the month-end performance data in the advertisement. The rule also sets forth requirements regarding the prominence of certain disclosures, requirements regarding advertisements that make tax representations, requirements regarding advertisements used prior to the effectiveness of the fund's registration statement, requirements regarding the timeliness of performance data. In addition, rule 482(b) describes the information that is required to be included in an advertisement, including a cautionary statement under rule 482(b)(4) disclosing the particular risks associated with investing in a money market fund.

On October 26, 2022, the Commission adopted rule and form amendments that modernize the requirements for annual and semi-annual shareholder reports provided by open-end management investment companies.² The Commission also adopted amendments to the advertising rules for registered investment companies and business development companies to promote more transparent and balanced statements about investment costs. The advertising rule amendments require that investment company advertisements providing fee and expense figures include: (1) the maximum amount of any sales load or any other nonrecurring fee; and (2) the total annual expenses without any fee waiver or expense reimbursement arrangement. Under the amendments to rule 482, investment company fee and

⁵⁷ 17 CFR 200.30-3(a)(12).

¹ "Investment company" refers to both investment companies registered under the Investment Company Act of 1940 ("Investment Company Act") (15 U.S.C. 80a-1 *et seq.*) and business development companies.

² Tailored Shareholder Reports for Mutual Funds and Exchange-Traded Funds; Fee Information in Investment Company Advertisements, Investment Company Act Release No. 34731 (Oct. 26, 2022), 87 FR 72758 (Nov. 25, 2022) (the "Adopting Release").

expense presentations in advertisements must include timely and prominent information about a fund's maximum sales load (or any other nonrecurring fee) and gross total annual expenses, based on the methods of computation that the company's Investment Company Act or Securities Act registration statement form prescribes for a prospectus.

Rule 482 advertisements must be filed with the Commission or, in the alternative, with the Financial Industry Regulatory Authority ("FINRA").³ This

information collection differs from many other federal information collections that are primarily for the use and benefit of the collecting agency.

Rule 482 contains requirements that are intended to encourage the provision to investors of information that is balanced and informative, particularly in the area of investment performance. The Commission is concerned that in the absence of such provisions fund investors may be misled by deceptive rule 482 advertisements and may rely on less-than-adequate information when

determining in which funds they should invest money. As a result, the Commission believes it is beneficial for funds to provide investors with balanced information in fund advertisements in order to allow investors to make better-informed decisions.

The table below summarizes our estimates associated with the amendments to rule 482 that the Adopting Release addresses:

RULE 482 PRA ESTIMATES

	Internal initial hour burdens	Internal annual burden ¹	Wage rate ²	Internal time costs
FINAL ESTIMATES FOR RULE 482				
New general requirements re: fee and expense figure disclosure.	9 hours	6 hours ³	\$381 (blended rate for compliance attorney and senior programmer).	\$2,286
Number of responses to rule 482 that include fee/expense figure disclosure.		× 36,492 ⁴ responses		× 36,492 responses
Total burden of new requirements for fee and expense disclosure.	.....	218,952 hours .....	.....	\$83,420,712
New requirements for disclosure of fee waivers/expense reimbursement arrangements.	6 hours	4 hours ⁵	\$381 (blended rate for compliance attorney and senior programmer).	\$1,524
Number of responses to rule 482 that disclose fee waivers/expense reimbursement arrangements.		× 36,492 responses		× 36,492 responses
Total burden of annual requirements for disclosure of fee waivers/expense reimbursement arrangements.	.....	145,968 hours .....	.....	\$55,613,808
Total annual burden .....	.....	364,920 hours .....	.....	\$139,034,520
TOTAL FINAL ESTIMATED BURDENS INCLUDING AMENDMENTS				
Current burden estimates .....	.....	212,927 hours .....	.....	\$74,098,735
Revised burden estimate .....	.....	577,847 hours .....	.....	\$213,133,255

Notes:

¹ Includes initial burden estimates annualized over a 3-year period.

² These PRA estimates assume that the same types of professionals would be involved in preparing advertisements (reflecting the proposed and final amendments to rule 482) that we believe otherwise would be involved in preparing a fund's advertisements. The Commission's estimates of the relevant wage rates are based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association's *Office Salaries in the Securities Industry 2013*. The estimated figures are modified by firm size, employee benefits, overhead, and adjusted to account for the effects of inflation. See Securities Industry and Financial Markets Association, Report on Management & Professional Earnings in the Securities Industry 2013.

³ This estimate assumed that, after the initial 9 hours that an entity would spend on the proposed fee and expense disclosure, which we annualize over a 3-year period, the entity would incur 3 additional burden hours associated with ongoing compliance with these requirements per year. The estimate of 6 hours is based on the following calculation: ((9 initial hours/3) + 3 hours of additional ongoing burden hours) = 6 hours.

⁴ The Commission estimates that there was a total of 41,953 responses to rule 482 that either were filed with FINRA or with the Commission in 2021. Of those, the Commission estimates that 1,124 were responses from closed-end funds and BDCs, and that 2,816 were responses from variable insurance contracts. The number of responses filed with the SEC is based on the average number of responses filed with the Commission from 2019–2021. The Commission assumes that, moving forward, closed-end funds and BDCs will choose to use free writing prospectuses under rule 433, and also that variable insurance contracts will not be subject to the amendments to rule 482. Therefore, we exclude closed-end funds, BDCs, and variable insurance contracts from the total responses to rule 482 for purposes of this estimate. For purposes of estimating the burden of the final rules amendments, we estimate that 38,013 responses to rule 482 are filed annually. We estimate that approximately 96% of these rule 482 responses provide fee and expense figures in qualifying advertisements and would, therefore, be required to comply with the final rule amendments regarding such information (for example, ensuring that the fee and expense figures are presented in accordance with the prominence and timeliness requirements in the amendments to rule 482).

³ See note to rule 482(h) under the Securities Act, which states that "these advertisements, unless filed with [FINRA], are required to be filed in accordance with the requirements of § 230.497."

See also rule 24b–3 under the Investment Company Act (17 CFR 270.24b–3), which provides that any sales material, including rule 482 advertisements, shall be deemed filed with the Commission for

purposes of Section 24(b) of the Investment Company Act upon filing with FINRA.

⁵ This estimate assumed that, after the initial 6 hours that an entity would spend on the proposed fee waiver and expense reimbursement requirements, which we annualized over a 3-year period, the entity would incur 2 additional burden hours associated with ongoing compliance with these requirements per year. The estimate of 4 hours is based on the following calculation ((6 initial hours/3) + 2 hours of additional ongoing burden hours) = 4 hours.

The table above summarizes our PRA initial and ongoing annual burden estimates associated with rule 482, as amended. In the aggregate, we estimate the total annual burden to comply with amended rule 482 to be 577,847 hours, at an average time cost of \$213,133,255.

The information provided under rule 482 will not be kept confidential. The provision of information under rule 482 is necessary to obtain the benefits of the safe harbor offered by the rule.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms. 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 OMB control number.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted by June 26, 2023.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549 or send an email to: PRA_Mailbox@sec.gov.

Dated: April 19, 2023.

Sherry R. Haywood,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97326; File No. SR-EMERALD-2023-10]

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Increase Fees for the ToM Market Data Product and Establish Fees for the cToM Market Data Product

April 19, 2023.

Pursuant to 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 April 11, 2023, 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") to amend the fees for two market data products by (i) amending the fees for MIAX Emerald Top of Market ("ToM"); and (ii) establishing fees for MIAX Emerald Complex Top of Market ("cToM").

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 its fees for two market data products by (i) amending the fees for ToM; and (ii) establishing fees for cToM. The proposed fees will be immediately effective. The Exchange initially filed the proposal on December 28, 2022 (SR-EMERALD-2022-37) (the "Initial Proposal").³ On February 23, 2023, the Exchange withdrew the Initial Proposal and replaced it with a revised proposal (SR-EMERALD-2023-04) (the "Second Proposal").⁴ The Exchange recently withdrew the Second Proposal and replaced it with this current proposal (SR-EMERALD-2023-10).

The Exchange previously filed several proposals to adopt fees for cToM.⁵ The Exchange notes that these prior proposals included an analysis of the costs underlying the compilation and dissemination of the proposed cToM fees. The Exchange previously included a cost analysis in the Initial Proposal. As described more fully below, the Exchange provides an updated cost analysis that includes, among other things, additional descriptions of how the Exchange allocated costs among it and its affiliated exchanges (MIAX PEARL, LLC ("MIAX Pearl"), separately among MIAX Pearl Options and MIAX Pearl Equities, and Miami International Securities Exchange, LLC ("MIAX," together with MIAX Pearl, the "affiliated markets")) to ensure no cost was allocated more than once, as well as additional detail supporting its cost allocation processes and explanations as

³ See Securities Exchange Act Release No. 96625 (January 10, 2023), 88 FR 2688 (January 17, 2023) (SR-EMERALD-2022-37).

⁴ See Securities Exchange Act Release No. 97078 (March 8, 2023), 88 FR 15813 (March 14, 2023) (SR-EMERALD-2023-04).

⁵ See Securities Exchange Act Release Nos. 92358 (July 9, 2021), 86 FR 37361 (July 15, 2021) (SR-EMERALD-2021-21); SR-EMERALD-2021-32 (withdrawn without being noticed by the Commission); 93427 (October 26, 2021), 86 FR 60310 (November 1, 2021) (SR-EMERALD-2021-34); 93811 (December 17, 2021), 86 FR 73051 (December 23, 2021) (SR-EMERALD-2021-44); 94263 (February 15, 2022), 87 FR 9766 (February 22, 2022) (SR-EMERALD-2022-06); 94715 (April 14, 2022), 87 FR 23674 (April 20, 2022) (SR-EMERALD-2022-14); 94892 (May 11, 2022), 87 FR 29963 (May 17, 2022) (SR-EMERALD-2022-18).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.