

Exchange had less than 12% market share of executed volume of multiply-listed equity and ETF options trades.<sup>13</sup>

The Exchange believes that the proposed rule change reflects this competitive environment because it modifies the Exchange's fees in a manner designed to continue to incent OTP Holders to direct Customer and Market Maker posted interest to the Exchange, to provide liquidity and to attract order flow. To the extent that this purpose is achieved, all the Exchange's market participants should benefit from the improved market quality and increased opportunities for price improvement.

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

No written comments were solicited or received with respect to the proposed rule change.

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

The foregoing rule change is effective upon filing pursuant to section 19(b)(3)(A)<sup>14</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>15</sup> thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such 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 under section 19(b)(2)(B)<sup>16</sup> of the Act 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:

<sup>13</sup> Based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of equity-based ETF options, *see id.*, the Exchange's market share in equity-based options increased slightly from 11.36% for the month of August 2022 to 11.37% for the month of August 2023.

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(2).

<sup>16</sup> 15 U.S.C. 78s(b)(2)(B).

### Electronic Comments

- Use the Commission's internet comment form (<https://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-NYSEARCA-2023-69 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-2023-69. 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 (<https://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 a.m. and 3 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-NYSEARCA-2023-69 and should be submitted on or before November 3, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2023-22507 Filed 10-12-23; 8:45 am]

**BILLING CODE 8011-01-P**

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

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98702; File No. SR-ISE-2023-22]

### Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Complex Order Rules

October 6, 2023

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 October 3, 2023, Nasdaq ISE, LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the 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 Substance of the Proposed Rule Change

The Exchange proposes to amend Options 3, Section 11, Auction Mechanisms, and Options 3, Section 13, Price Improvement Mechanisms for Crossing Transactions.

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/ise/rules>, at the principal office of the Exchange, 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

In connection with a technology migration to an enhanced Nasdaq, Inc.

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

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

(“Nasdaq”) functionality, the Exchange proposes to amend certain auction rules<sup>3</sup> which describe the short sale price test in Rule 201 of Regulation SHO. Specifically, the Exchange proposes to adopt a new sentence within Options 3, Section 11, Auction Mechanisms, and Options 3, Section 13, Price Improvement Mechanisms for Crossing Transactions, to add further detail to the recently adopted stock-tied rule text. This rule change is identical to a rule change filed by Nasdaq MRX, LLC (“MRX”),<sup>4</sup>

#### Background

Today, ISE Members may trade certain Stock-Option Orders as described in ISE Options 3, Section 14(a)(2)<sup>5</sup> and Stock-Complex Orders as described in ISE Options 3, Section 14(a)(3),<sup>6</sup> among other things. ISE recently filed a rule change to amend its stock-tied functionality in connection with a technology migration.<sup>7</sup> Among other things, the proposal added

<sup>3</sup> See Securities Exchange Act Release No. 98066 (August 7, 2023), 88 FR 54672 (SR-ISE-2023-13) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend ISE Rules Related to Complex Orders with Respect to a System Migration) (“SR-ISE-2023-13”).

<sup>4</sup> See Securities Exchange Act Release No. 98599 (September 28, 2023) (SR-MRX-2023-18) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend its Complex Order Rules) (not yet published).

<sup>5</sup> The term “Stock-Option Order” refers to an order for a Stock-Option Strategy as defined in Options 3, Section 14(a)(2). A Stock-Option Strategy is the purchase or sale of a stated number of units of an underlying stock or a security convertible into the underlying stock (“convertible security”) coupled with the purchase or sale of options contract(s) on the opposite side of the market representing either (A) the same number of units of the underlying stock or convertible security, or (B) the number of units of the underlying stock necessary to create a delta neutral position, but in no case in a ratio greater than eight-to-one (8.00), where the ratio represents the total number of units of the underlying stock or convertible security in the option leg to the total number of units of the underlying stock or convertible security in the stock leg. See ISE Options 3, Section 14(a)(2).

<sup>6</sup> The term “Stock-Complex Order” refers to an order for a Stock-Complex Strategy as defined in Options 3, Section 14(a)(3). A Stock-Complex Strategy is the purchase or sale of a stated number of units of an underlying stock or a security convertible into the underlying stock (“convertible security”) coupled with the purchase or sale of a Complex Options Strategy on the opposite side of the market representing either (A) the same number of units of the underlying stock or convertible security, or (B) the number of units of the underlying stock necessary to create a delta neutral position, but in no case in a ratio greater than eight-to-one (8.00), where the ratio represents the total number of units of the underlying stock or convertible security in the option legs to the total number of units of the underlying stock or convertible security in the stock leg. Only those Stock-Complex Strategies with no more than the applicable number of legs, as determined by the Exchange on a class-by-class basis, are eligible for processing. See ISE Options 3, Section 14(a)(3).

<sup>7</sup> See SR-ISE-2023-13.

Supplementary Material .08(c) to Options 3, Section 11 and Supplementary Material .09(c) to Options 3, Section 13<sup>8</sup> to address the short sale price test in Rule 201 of Regulation SHO with respect to Complex PIM Orders,<sup>9</sup> Complex Facilitation Orders<sup>10</sup> and Complex SOM Orders.<sup>11</sup> The rule states that when the short sale price test in Rule 201 of Regulation SHO is triggered for a covered security, Nasdaq Execution Services, LLC (“NES”),<sup>12</sup> will not execute a short sale order in the underlying covered security component of a Complex Facilitation Order, Complex SOM Order and/or Response, or in the underlying security component of a Complex PIM Order and/or Improvement Order, if the price is equal to or below the current national best bid.<sup>13</sup> However, NES will execute a short sale order in the underlying covered security component of a Complex Facilitation Order, Complex SOM Order and/or Response, or in the underlying security component of a Complex PIM Order and/or Improvement Order, if such order is marked “short exempt,” regardless of whether it is at a price that is equal to or below the current national best bid.<sup>14</sup> Further, if NES cannot execute the underlying covered security component of a Complex Facilitation Order, Complex SOM Order and/or Response, or Complex PIM Order and/or Improvement Order, in accordance with Rule 201 of Regulation SHO, the Exchange will cancel back the Complex Facilitation Order, Complex SOM Order and/or Response or Complex PIM Order and/or Improvement Order to the entering Member.

<sup>8</sup> *Id.*

<sup>9</sup> A Complex PIM Order is an order entered into the Complex Price Improvement Mechanism as described in Options 3, Section 13(e). See ISE Options 3, Section 14(b)(18).

<sup>10</sup> A Complex Facilitation Order is an order entered into the Complex Facilitation Mechanism as described in Options 3, Section 11(c). See ISE Options 3, Section 14(b)(16).

<sup>11</sup> A Complex SOM Order is an order entered into the Complex Solicited Order Mechanism as described in Options 3, Section 11(e). See ISE Options 3, Section 14(b)(17).

<sup>12</sup> NES is a broker-dealer owned and operated by Nasdaq, Inc. NES, an affiliate of the Exchange, has been approved by the Commission to become a Member of the Exchange and perform inbound routing on behalf of the Exchange.

<sup>13</sup> See ISE Supplementary Material .08(c) to Options 3, Section 11 and ISE Supplementary Material .09(c) to Options 3, Section 13. The term “covered security” has the same meaning as in Rule 201(a)(1) of Regulation SHO.

<sup>14</sup> See ISE Supplementary Material .08(c) to Options 3, Section 11 and ISE Supplementary Material .09(c) to Options 3, Section 13.

#### Proposal

At this time, the Exchange proposes to amend its Complex SOM, Complex Facilitation, and Complex PIM rules to add a new sentence within Supplementary Material .08(c) to Options 3, Section 11 and Supplementary Material .09(c) to Options 3, Section 13 that describes the manner in which NES would execute a short sale order in the underlying covered security component of Response, Improvement Complex Order, or unrelated Limit Complex Order on the Complex Order Book (1) when the facilitating Electronic Access Member’s contra-order, the solicited contra-side Complex Order, or the Counter-Side Order does not include a short sale order in the underlying covered security component; or (2) when the facilitating Electronic Access Member’s contra-order, the solicited contra-side Complex Order, or the Counter-Side Order includes a short sale order in the underlying security component. As described more fully below, in the first case NES would execute the underlying covered security component of the Response, Improvement Complex Order, or unrelated Limit Complex Order on the Complex Order Book at its stated limit price. In the second case, NES would execute the underlying security component of the Response, Improvement Complex Order, or unrelated Limit Complex Order on the Complex Order Book at its stated limit price or better.

The proposed rules will make clear to Members who submit auction responses or Improvement Orders that include a short sale order, or Members that place orders on the Complex Order Book that include a short sale order, the manner in which NES will execute the short sale component of their order when their Response, Improvement Complex Order, or unrelated Limit Complex Order on the Complex Order Book executes in the Complex SOM, Complex Facilitation, and Complex PIM auction, (*i.e.*, their short sale order will execute at its stated limit price, but not at a better price) if the facilitating Electronic Access Member’s contra-order, the solicited contra-side Complex Order, or the Counter-Side Order does not include a short sale order. However their short sale order will execute at its stated limit price or better if the facilitating Electronic Access Member’s contra-order, the solicited contra-side Complex Order, or the Counter-Side Order includes a short sale order. Thus, whether a short sale order included in an auction receives its stated limit price, or potentially receives a better price

than its limit price, depends on whether the contra-side order submitted to the auction with an agency order also included a short sale order. Although the availability of the potential for price improvement for the responder's short sale order will vary, depending on whether the contra-order also included a short sale order, ISE notes that for the reasons described below the alternative would be to exclude auction orders that include a short sale order from the Complex SOM, Complex Facilitation, and Complex PIM altogether, which would decrease competition in the auction and potentially reduce opportunities for the agency order to receive price improvement in the auctions. Below are some examples of Complex PIM Auction responses ("Improvement Orders") executing within a Complex PIM Auction.<sup>15</sup>

**Example No. 1—Complex PIM Auction Utilizing Stated Limit Price**

ISE BBO for option leg is  $0.05 \times 0.10$ .

Underlying equity NBBO is  $1.05 \times 1.10$ .

Reg SHO short sale price test is triggered in the underlying.

Stock-Option Strategy is created to buy 1 put, buy 100 shares (cBBO for this strategy is  $1.10 \times 1.20$ ).

Complex PIM to buy strategy, 100 @ 1.13 (buy stock @1.08 and options @ 0.05);<sup>16</sup> Counter-Side Order does not include a short sale order.

Improvement Complex Order1 is a Priority Customer Order to sell, sell short stock leg, 100 @1.11 (sell stock @ 1.06 and options @0.05).

Improvement Complex Order2 to sell, sell short stock leg, 100 @1.12 (sell stock @1.07 and options @0.05).

Complex PIM auction timer concludes:

Improvement Complex Order1 trades with Complex PIM Agency Order, option @0.05 and stock @1.06 for net price of 1.11. The Improvement Complex Order may not trade the underlying equity at 1.05 because it cannot execute a short sale order at a price that is equal to the NBB of the underlying equity.

<sup>15</sup> While the examples utilize the Complex PIM auction, the same examples apply to a Complex SOM or Complex Facilitation auction.

<sup>16</sup> The Exchange notes that different combinations of stock and options prices could determine the strategy prices in this Example 1 as well as Examples 2 and 3. The Exchange is assuming the noted prices for the examples, however the Exchange notes that multiple price points could achieve the net prices in these examples. In this particular case in Example 1, the agency order could buy stock @1.07 and buy options @0.06 in lieu of the prices noted.

**Example No. 2—Complex PIM Auction Utilizing Stated Limit Price**

ISE BBO for option leg is  $0.05 \times 0.10$ .

Underlying equity NBBO is  $1.05 \times 1.10$ .

Reg SHO short sale price test is triggered in the underlying.

Stock-Option Strategy is created to buy 1 put, buy 100 shares (cBBO for this strategy is  $1.10 \times 1.20$ ).

Complex PIM to buy strategy, 100 @ 1.13 (buy stock @1.08 and options @ 0.05); Counter-Side Order does not include a short sale order.

Improvement Complex Order1 is a Priority Customer Order to sell, sell short stock leg, 100 @1.10 (sell stock @ 1.05 and options @0.05).

Improvement Complex Order2 to sell, sell short stock leg, 100 @1.12 (sell stock @1.06 and options @0.06).

Complex PIM auction timer concludes:

Improvement Complex Order2 trades with Complex PIM Agency Order, option @0.06 and stock @1.06 for net price of 1.12. Since the Counter-Side Order does not include a short sale order, Improvement Complex Order1 is considered for execution at its stated limit price of 1.10; since it cannot trade at 1.10 due to Reg SHO, it does not trade with the Complex PIM Agency Order.

**Example No. 3—Complex PIM Auction Where Counter-Side Is Also Short Selling**

ISE BBO for option leg is  $0.05 \times 0.10$ .

Underlying equity NBBO is  $1.05 \times 1.20$ .

Counter-Side Order includes a short sale order.

Reg SHO short sale price test is triggered in the underlying.

Stock-Option Strategy is created to buy 1 put, buy 100 shares (cBBO for this strategy is  $1.10 \times 1.30$ ).

Complex PIM to Buy strategy, 100 @ 1.13, Counter-Side Order is a Market Order that is willing to auto-match at any price point within Reg SHO price restriction bound and has 'sell short' stock leg instructions and therefore cannot trade the stock component at any price less than or equal to the underlying best bid of \$1.05. In this example, if the Counter-Side Order did not have a "sell short" instruction it would not be required to trade at a price that is better than the NBB for security (\$1.05) and could execute at a price equal to or less than the underlying best bid of \$1.05. The price of 1.10 is the cBB (net of option and underlying NBB).

Improvement Complex Order1 is to sell, sell short stock leg, 100 @1.10 (selling stock at 1.05 and options at 0.05; note it cannot trade at 1.10 due to Reg SHO).

Improvement Complex Order2 to sell, sell short stock leg, 100 @1.12 (selling stock at 1.06 and options at 0.06).

Complex PIM auction timer concludes:

The Complex PIM Agency Order first executes 40 contracts with the Counter-Side Market Order, the option leg at 0.05 and stock leg at 1.06 for a net price of 1.11. The remaining 60 contracts from the Complex Agency Order then execute with Improvement Complex Order1 at the same price. In this example, both the Complex Counter-Side Order and the Improvement Complex Order are marked short sale, which permits the Improvement Complex Order to trade at a price that is better than its stated limit price.

In this example, the Improvement Complex Order traded at its next available price in lieu of its stated limit price because both the Counter-Side Order and the Improvement Complex Order included a short sale order in the underlying component security. In contrast, if the Counter-Side Order did not include a short sale order than [sic] the Counter-Side Order and Improvement Complex Order2 trade with the Complex PIM Agency Order for [sic] net price of 1.12 (option @0.06 and stock @1.06).

The Exchange proposes to amend the rule text in Supplementary Material .08 to Options 3, Section 11 with respect to a SOM and Facilitation auction to provide:

When a response or an unrelated limit complex order on the complex order book includes a short sale order in the underlying covered security, NES will execute such order at (1) its stated limit price if the facilitating Electronic Access Member's contra order or contra-side solicited Complex Order does not include a short sale order in the underlying security; or (2) its stated limit price or better if the facilitating Electronic Access Member' contra order or the solicited contra-side Complex Order includes a short sale order in the underlying covered security.

With respect to a Complex PIM auction, the Exchange proposes to amend the rule text within Supplementary Material .09 to Options 3, Section 13 to provide:

When an improvement order or an unrelated limit complex order on the complex order book includes a short sale order in the underlying covered security, NES will execute such order at (1) its stated limit price if the Counter-Side Order does not include a short sale order in the underlying security; or (2) its stated limit price or better if the counter-side order includes a short sale order in the underlying covered security.

In such case where a response or an unrelated limit complex order on the complex order book includes a short

sale order in the underlying covered security, NES will execute the order at its stated limit price if the facilitating Electronic Access Member's contra order, contra-side solicited Complex Order, or Counter-Side Order *does not include a short sale order* in the underlying covered security because the Exchange desires to foster competition by including responses that have a short sale order in the underlying covered security. In this scenario, the Exchange would consider all prices submitted by responders at which the auction may execute because the Electronic Access Member's contra order, contra-side solicited Complex Order, or Counter-Side Order does not need to comply with the short sale price test in Rule 201 of Regulation SHO because the order is not short. By using the order's stated limit price in this case, the Exchange would allow the responder with a short sale order to participate in the auction and allocate the best price possible to the agency order while complying with the short sale price test.<sup>17</sup> The Exchange believes that including responses with a short sale order in the underlying covered security may create additional competition in the Complex SOM, Complex Facilitation and Complex PIM auction while also providing additional opportunity for potential price improvement for the agency order.

When a response, Improvement Order, or an unrelated limit complex order on the complex order book includes a short sale order in the underlying covered security, NES will execute the order at its stated limit price or better if the facilitating Electronic Access Member contra order, solicited contra-side Complex Order, or Counter-Side Order *includes a short sale order* in the underlying security component. In this case, each short sale compliant price would be considered in determining the price at which the auction may execute, which would be at its stated limit price or better. In this scenario, because the Electronic Access Member contra order, solicited contra-

side Complex Order, or Counter-Side Order are short, the Exchange will only consider prices that comply with the short sale price test in Rule 201 of Regulation SHO. In this case, all prices that are compliant with the short sale price test are considered when allocating the auction, and both the agency order and responders may receive a better price. The auction would allocate at the agency order's stated limited price or better depending on the prices of the responses. The auction responses may execute at their stated limited price or better depending on the final auction price.

This is in contrast to the prior scenario where the Electronic Access Member's contra order, contra-side solicited Complex Order, or Counter-Side Order does not need to comply with the short sale price test. Utilizing the proposed stated limit price or better where a Member's contra order, contra-side solicited Complex Order, or Counter-Side Order includes a short sale order allows the Exchange to potentially provide price improvement opportunity to the agency order.

#### Implementation

The Exchange intends to begin implementation of the proposed rule change prior to December 20, 2024. The implementation would commence with a limited symbol migration and continue to migrate symbols over several weeks. The Exchange will issue an Options Trader Alert to Members to provide notification of the symbols that will migrate and the relevant dates.

#### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>18</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>19</sup> in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest for the reasons discussed below.

With respect to short sale regulation, the proposed handling of the stock/ETF component of a Complex Order under this proposal does not raise any issues of compliance with the currently operative provisions of Regulation SHO<sup>20</sup> and, therefore, the proposal promotes just and equitable principles of trade. When a Complex Order has a stock/ETF component, Members must indicate, pursuant to Regulation SHO, whether that order involves a long or short sale. NES, as a trading center

under Rule 201, will be compliant with the requirements of Regulation SHO. Of course, broker-dealers, including both NES and the Members submitting orders to ISE with a stock/ETF component, must comply with Regulation SHO. NES' compliance team updates, reviews and monitors NES' policies and procedures including those pertaining to Regulation SHO on an annual basis.

In the case where a response, Improvement Order, or an unrelated limit complex order includes a short sale order in the underlying covered security, executing such order at its stated limit price when the facilitating Electronic Access Member's contra order, contra-side Complex Order, or Counter-Side Order *does not include a short sale order* in the underlying security would protect investors and the public interest by considering all prices at which the auction could execute. Under these circumstances, the Response, Improvement Complex Order, or unrelated Limit Complex Order would be considered for execution at its stated limit price (provided the limit price is compliant with the short sale price test in Rule 201 of Regulation SHO) while the Electronic Access Member's contra order, contra-side solicited Complex Order, or Counter-Side Order does not need to comply with the short sale price test in Rule 201 of Regulation SHO because the order is not short. Utilizing the order's stated limit price in this case allows the responder with a short sale order to participate in the auction while the agency order is allocated the best price possible while complying with the short sale price test. The Exchange believes that this behavior is consistent with the protection of investors and the public interest because it attempts to afford price improvement to the agency order over the responder to the auction. Finally, the Exchange believes that including responses with a short sale order in the underlying covered security may create additional competition in the Complex SOM, Complex Facilitation and Complex PIM auction and provides the agency order with additional opportunities for potential price improvement.

In contrast, when the facilitating Electronic Access Member's contra order, contra-side Complex Order, or Counter-Side Order *includes a short sale order* in the underlying covered security, the auction must be allocated at a price that is short sell compliant. In this case, each short sale compliant price would be considered in determining the price at which the Complex SOM, Complex Facilitation and Complex PIM auction may execute

<sup>17</sup> For example, utilizing a Complex PIM auction with a BBO of 0.05 × 0.10 and an NBBO for the underlying security component of 1.05 × 1.10, if the Initiating Order submitted an agency order to buy @1.13 and a contra-order to sell @1.13, with auto-match at any price point, and Responder1 was long @1.10, and Responder2 was short @1.10 (in this scenario 1.10 would not comply with the short sale price test), pursuant to the proposed amendment, the agency order would receive a price improvement allocation @1.10. In this scenario the improved price of 1.11 would not be allocated to the responder with a short sale rather the price improvement would be applied to the agency order. The Exchange believes it is important to offer price improvement to the agency order over the responder to the auction. Of note, the responder that was short @1.10 would be cancelled.

<sup>18</sup> 15 U.S.C. 78f(b).

<sup>19</sup> 15 U.S.C. 78f(b)(5).

<sup>20</sup> 17 CFR 242.200 *et seq.*

and, because the Electronic Access Member contra order, solicited contra-side Complex Order, or Counter-Side Order are short, the Exchange will only consider prices that comply with the short sale price test in Rule 201 of Regulation SHO. As a result, the auction may allocate at the agency order's stated limited price or better depending on the prices of the responses. Also, the auction responses may execute at their stated limited price or better depending on the final auction price. The Exchange believes its proposal is consistent with the Act and the protection of investors because both the agency order and responders may receive a better price in this case. This is in contrast to the prior scenario where the Electronic Access Member's contra order, contra-side solicited Complex Order, or Counter-Side Order does not need to comply with the short sale price test. Utilizing the proposed stated limit price or better where a Member's contra order, contra-side solicited Complex Order, or Counter-Side Order includes a short sale order allows the Exchange to potentially provide a price improvement opportunity to the agency order and to the auction response. With the proposed amendments, Complex SOM, Complex Facilitation, and Complex PIM auction responders who submit a response would be aware of the auction price that would comply with the short sale price test in Rule 201 of Regulation SHO. The proposed amendment allows Members to participate in auctions with a short sale response and such participation facilitates competition in these auctions. This proposed approach is in lieu of prohibiting Members whose auction Responses or resting Limit Complex Orders include a short sale order from responding to these auctions, which would limit competition in the auction. By allowing additional responses to participate in the auction, the Exchange believes that the proposal would benefit investors and the public interest because the additional interest may increase competition in these auctions, which may lead to better prices.

#### *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 not necessary or appropriate in furtherance of the purposes of the Act.

Where a response, Improvement Order, or an unrelated limit complex order includes a short sale order in the underlying covered security, executing such order at its stated limit price when the facilitating Electronic Access Member's contra order, contra-side

Complex Order, or Counter-Side Order *does not include a short sale order* in the underlying covered security does not impose an undue burden on intra-market competition because the Exchange would uniformly consider all prices submitted by responders in determining the allocation price because the Electronic Access Member's contra order, contra-side solicited Complex Order, or Counter-Side Order does not need to comply with the short sale price test in Rule 201 of Regulation SHO because the order is not short. Where a response, Improvement Order, or an unrelated limit complex order includes a short sale order in the underlying covered security, executing such order at its stated limit price or better when the facilitating Electronic Access Member's contra order, contra-side Complex Order, or Counter-Side Order *is also a short sale order* in the underlying covered security component does not impose an undue burden on intra-market competition because the Exchange would uniformly consider all prices that are compliant with the short sale price test when allocating the auction.

Where a response, Improvement Order, or an unrelated limit complex order includes a short sale order in the underlying covered security, executing such order at its stated limit price when the facilitating Electronic Access Member's contra order, contra-side Complex Order, or Counter-Side Order does not include a short sale order in the underlying covered security and executing such order its stated limit price or better when the facilitating Electronic Access Member contra-order, solicited contra-side Complex Order, or Counter-Side Order is also a short sale order in the underlying covered security component does not impose an undue burden on inter-market competition because other options exchanges today may offer a similar process for handling stock-tied transactions that have a short sale order.

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

No written comments were either solicited or 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)(iii) of the Act<sup>21</sup> and Rule 19b-4(f)(6) thereunder.<sup>22</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.

### **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 (<https://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-ISE-2023-22 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-ISE-2023-22. 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 (<https://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

<sup>21</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>22</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires the Exchange 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.

Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 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-ISE-2023-22 and should be submitted on or before November 3, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>23</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

[FR Doc. 2023-22611 Filed 10-12-23; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98691; File No. SR-EMERALD-2023-19]

### Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Withdrawal of Proposed Rule Change To Amend the Fee Schedule To Modify Certain Connectivity Fees and Ports Fees

October 5, 2023.

On August 8, 2023, 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 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend certain connectivity and port fees.

The proposed rule change was immediately effective upon filing with the Commission pursuant to section 19(b)(3)(A) of the Act.<sup>3</sup> The proposed rule change was published for comment in the **Federal Register** on August 25, 2023.<sup>4</sup> On September 29, 2023, pursuant to section 19(b)(3)(C) of the Act,<sup>5</sup> the

Commission: (1) temporarily suspended the proposed rule change; and (2) instituted proceedings under Section 19(b)(2)(B) of the Act<sup>6</sup> to determine whether to approve or disapprove the proposed rule change.<sup>7</sup> On October 2, 2023, the Exchange withdrew the proposed rule change (SR-EMERALD-2023-19).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2023-22505 Filed 10-12-23; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98703; File No. SR-FINRA-2023-013]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Amend the FINRA Codes of Arbitration Procedure and Code of Mediation Procedure To Revise and Restate the Qualifications for Representatives in Arbitrations and Mediations

October 6, 2023.

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 October 5, 2023, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. 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

FINRA is proposing to amend FINRA Rule 12208(b) through (d) of the Code of Arbitration Procedure for Customer Disputes (“Customer Code”), FINRA Rule 13208(b) through (d) of the Code of Arbitration Procedure for Industry Disputes (“Industry Code”) and FINRA Rule 14106(b) through (d) of the Code of Mediation Procedure (“Mediation Code” and collectively, “Codes”), to

<sup>6</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>7</sup> See Securities Exchange Act Release No. 98656, 88 FR 68680 (October 4, 2023).

<sup>8</sup> 17 CFR 200.30-3(a)(12).

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

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

revise and restate the qualifications for representatives in arbitrations and mediations in the forum administered by FINRA Dispute Resolution Services (“DRS”); to disallow compensated representatives who are not attorneys from representing parties in the DRS forum; to codify that a student enrolled in a law school participating in a law school clinical program or its equivalent and practicing under the supervision of an attorney may represent investors in the DRS forum; and to clarify the circumstances in which any person, including attorneys, would be prohibited from representing parties in the DRS forum.

The text of the proposed rule change is available on FINRA’s website at <http://www.finra.org>, at the principal office of FINRA 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, FINRA 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. FINRA 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

The Codes currently permit parties to arbitrations and mediations in the DRS forum to represent themselves, to be represented by an attorney at law in good standing or to be represented by a non-attorney representative (“NAR”).<sup>3</sup> Some NARs receive compensation in connection with their representation of parties (“compensated NARs”). Compensated NARs receive monetary or non-monetary compensation in connection with the representation of parties—including, for example, advance fees, consulting fees, payments in kind, referral fees or fees pursuant to a contingent fee arrangement. Other NARs, often friends or relatives of a party, may assist parties with their cases without compensation (“uncompensated NARs”). In addition, although not specifically provided for in

<sup>3</sup> See FINRA Rules 12208, 13208 and 14106.

<sup>23</sup> 17 CFR 200.30-3(a)(12), (59).

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

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

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A). A proposed rule change may take effect upon filing with the Commission if it is designated by the exchange as “establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization.” 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>4</sup> See Securities Exchange Act Release No. 98176 (August 21, 2023), 88 FR 58342.

<sup>5</sup> 15 U.S.C. 78s(b)(3)(C).