

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 September 26, 2022.

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, Acting 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](mailto:PRA_Mailbox@sec.gov).

Dated: July 22, 2022.

**J. Matthew DeLesDernier,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-95352; File No. SR-EMERALD-2022-25]

### Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 515A and Exchange Rule 518

July 22, 2022.

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 July 13, 2022, MIAX Emerald, LLC (“MIAX Emerald” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rule 518 to adopt (i) Complex Auction-on-Arrival-Only (“cAOAO”) orders and (ii) Complex Attributable Orders. Additionally, the Exchange

proposes to amend Exchange Rule 518 to exclude cPRIME Orders from the Complex MIAX Emerald Price Collar Protection. The Exchange proposes to amend Exchange Rule 515A to adopt ISO PRIME orders and to make last priority allocation available for cPRIME Agency Orders.

The text of the proposed rule change is available on the Exchange’s website at <http://www.miaxoptions.com/rule-filings/emerald>, at MIAX Emerald’s principal office, and at the Commission’s Public Reference Room.

#### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to amend: (i) Exchange Rule 518 to adopt a new Complex Auction-on-Arrival-Only (“cAOAO”) order type and to amend relevant portions of the rule to describe the behavior and operation of a cAOAO order;<sup>3</sup> (ii) Exchange Rule 518 to adopt a new order type, Complex Attributable Order;<sup>4</sup> (iii) Interpretation and Policy .05 of Exchange Rule 518 to exclude cPRIME Orders from the Complex MIAX Emerald Price Collar Protection;<sup>5</sup> (iv) Interpretation and Policy .12 of Exchange Rule 515A to remove the provision that precludes last priority in allocation from being available to Initiating Members<sup>6</sup> that submit

<sup>3</sup> The Exchange notes that the proposed rule text and functionality is identical to current rule text and functionality on MIAX Options. See MIAX Options Exchange Rule 518(b)(9).

<sup>4</sup> The Exchange notes that the proposed rule text and functionality is substantively identical to current rule text and functionality on MIAX Options. See MIAX Options Exchange Rule 518(b)(8).

<sup>5</sup> The Exchange notes that the proposed rule text and functionality is identical to current rule text and functionality on MIAX Options. See MIAX Options Exchange Rule 532(b)(6)(i).

<sup>6</sup> An “Initiating Member” initiates a PRIME Auction. See Exchange Rule 515A(a)(1). The term “Member” means an individual or organization

cPRIME Agency Orders;<sup>7</sup> and (v) amend Exchange Rule 515A to adopt a new ISO PRIME order type and a new allocation methodology for Market Maker interest that is executed during an ISO PRIME Auction.<sup>8</sup>

#### Background

The Exchange launched in December 2018, and at that time, the Exchange Rulebook contained complex order rules that were substantially similar to the rules of its affiliate exchange, MIAX Options. Since December 2018, MIAX Options has added functionality to grow its complex order business. The Exchange proposes to amend its rules to adopt functionality that currently exists on the MIAX Options Exchange. The Exchange and MIAX Options seek to align functionality where feasible. The proposed rule changes described below are identical, or substantively identical, to rule changes filed by the Exchange’s affiliate, MIAX Options.<sup>9</sup>

##### i. Complex Auction-on-Arrival-Only Order Type

The Exchange proposes to amend Exchange Rule 518, Complex Orders, to adopt a new cAOAO order type and to amend relevant portions of the rule to describe the behavior and operation of the new cAOAO order type. This proposed rule change is identical to a rule change filed by the Exchange’s affiliate, MIAX Options.<sup>10</sup>

Currently, the Exchange offers a Complex Auction-on-Arrival or “cAOA” order that is a complex order designated to be placed into a Complex Auction<sup>11</sup> upon receipt or upon evaluation. Complex orders that are not designated

approved to exercise the trading rights associated with a Trading Permit. Members are deemed “members” under the Exchange Act. See Exchange Rule 100.

<sup>7</sup> The Exchange notes that the proposed rule text and functionality is identical to current rule text and functionality on MIAX Options. See Interpretations and Policies .12(c)(v) of MIAX Options Exchange Rule 515A.

<sup>8</sup> The Exchange notes that the proposed rule text and functionality is identical to current rule text and functionality on MIAX Options. See Interpretations and Policies .08 of MIAX Options Exchange Rule 515A and MIAX Options Exchange Rule 515A(a)(2)(iii)(C).

<sup>9</sup> See Securities Exchange Act Release Nos. 89212 (July 1, 2020), 85 FR 41075 (July 8, 2020) (SR-MIAX-2020-20); 89085 (June 17, 2020), 85 FR 37719 (June 23, 2020) (SR-MIAX-2020-16); 89206 (July 1, 2020), 85 FR 41079 (July 8, 2020) (SR-MIAX-2020-19); and 89991 (September 24, 2020), 85 FR 61782 (September 30, 2020) (SR-MIAX-2020-31).

<sup>10</sup> See Securities Exchange Act Release No. 89212 (July 1, 2020), 85 FR 41075 (July 8, 2020) (SR-MIAX-2020-20) (amending MIAX Options Exchange Rule 518, Complex Orders, to adopt a new Complex Auction-on-Arrival-Only Order type); see also MIAX Options Exchange Rule 518(b)(9).

<sup>11</sup> See Exchange Rule 518(d).

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

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

as cAOA will, by default, not initiate a Complex Auction upon arrival, but except as described in Exchange Rule 518, will be eligible to participate in a Complex Auction that is in progress when such complex order arrives, or if placed on the Strategy Book, may participate in or may initiate a Complex Auction, following evaluation conducted by the System.<sup>12</sup> Complex orders that are designated as cIOC<sup>13</sup> or cAOC<sup>14</sup> are not eligible for cAOA designation, and their evaluation will not result in the initiation of a Complex Auction either upon arrival or if eligible when resting on the Strategy Book.<sup>15</sup> Any unexecuted balance of a cAOA Order remaining upon the completion of the auction process is eligible<sup>16</sup> to be placed on the Strategy Book.

The Exchange now proposes to adopt a new Complex Auction-on-Arrival-Only or “cAOAO” order type.<sup>17</sup> A cAOAO order is a complex order that will be placed into an auction as described in Rule 518(d) if eligible, and cancelled if not eligible. Any unexecuted balance of a cAOAO order remaining upon the completion of the auction process is cancelled. Similar to Immediate-or-Cancel orders, the cAOAO order type is designed to assist Members<sup>18</sup> in achieving an expeditious execution by exposing eligible Complex orders for potential price improvement before cancelling any unexecuted balance.

<sup>12</sup> See Exchange Rule 518(b)(2)(i); The term “System” means the automated trading system used by the Exchange for the trading of securities. See Exchange Rule 100.

<sup>13</sup> A Complex Immediate-or-Cancel or “cIOC” order is a complex order that is to be executed in whole or in part upon receipt. Any portion not so executed is cancelled. See Exchange Rule 518(b)(4).

<sup>14</sup> A Complex Auction-or-Cancel or “cAOC” order is a complex limit order used to provide liquidity during a specific Complex Auction with a time in force that corresponds with that of the event. cAOC Orders are not displayed to any market participant, and are not eligible for trading outside of the event. A cAOC order with a size greater than the aggregate auctioned size (as defined in Rule 518(d)(4)) will be capped for allocation purposes at the aggregate auctioned size. See Exchange Rule 518(b)(3).

<sup>15</sup> See Exchange Rule 518(b)(2)(ii); The “Strategy Book” is the Exchange’s electronic book of complex orders and complex quotes. See Exchange Rule 518(a)(17).

<sup>16</sup> Any unexecuted portion of a Complex Auction-eligible order remaining at the end of the Response Time Interval will either be: (A) evaluated to determine if it may initiate another Complex Auction; or (B) placed on the Strategy Book and ranked pursuant to subparagraph (c)(3) of Exchange Rule 518. See Exchange Rule 518(d)(5)(ii).

<sup>17</sup> See proposed Exchange Rule 518(b)(9).

<sup>18</sup> The term “Member” means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed “members” under the Exchange Act. See Exchange Rule 100.

#### Example 1

Suppose the following market in complex strategy ABC:  
MIAX Emerald dcEBBO: <sup>19</sup> 1.00–1.10  
(10 × 10)

A cAOAO order is entered to buy 20 @1.07.

A Request For Response (RFR) message is sent identifying the complex strategy, the price, quantity of matched complex quotes and/or orders at that price, imbalance quantity and side of the market of the cAOAO order, in accordance to Rule 518(d)(2).<sup>20</sup>

During the Response Time Interval, the following RFR Responses<sup>21</sup> are received:

Response 1: Sell 10 @1.07

Response 2: Sell 5 @1.07

At the conclusion of the Response Time Interval, the cAOAO order trades 15 @1.07.

The remaining quantity of 5 contracts from the cAOAO order is then cancelled.

The Exchange proposes to amend Exchange Rule 518(b), Types of Complex Orders, to adopt a new Complex Auction-on-Arrival Only (“cAOAO”) order type to be included among other complex order types that may be submitted to the Exchange as provided by Exchange Rule 518(b)(1). In addition, certain provisions in current Exchange Rule 518 that apply to cAOA orders would also apply to cAOAO orders. Therefore, the Exchange proposes to amend Rule 518 to incorporate references to cAOAO orders as necessary. Specifically, the Exchange proposes to amend Rule 518(c)(6) to provide that complex orders may be submitted as market orders and may be designated as cAOA or cAOAO.

Additionally, the Exchange proposes to amend Rule 518(c)(6)(i) to provide that complex market orders designated as cAOA or cAOAO may initiate a Complex Auction upon arrival or join a Complex Auction in progress. Finally, the Exchange proposes to amend Rule

<sup>19</sup> The dcEBBO is calculated using the best displayed price for each component of a complex strategy from the Simple Order Book. For stock-option orders, the dcEBBO for a complex strategy will be calculated using the Exchange’s best displayed bid or offer in the individual option component(s) and the NBBO in the stock component. See Exchange Rule 518(a)(8).

<sup>20</sup> An auction is commenced as the cAOAO order satisfies the URIP requirement described in Exchange Rule 518(c)(5)(i).

<sup>21</sup> Members may submit a response to the RFR message (an “RFR Response”) during the Response Time Interval. RFR Responses may be submitted in \$0.01 increments. RFR Responses must be a cAOC Order or a cAOC eQuote as defined in Interpretations and Policies .02 of Exchange Rule 518 and may be submitted on either side of the market. See Exchange Rule 518(d)(4).

518(c)(6)(ii) to provide that complex market orders not designated as cAOA or cAOAO will trade immediately with any contra-side complex orders or quotes, or against the individual legs, up to and including the dcEBBO, and may be subject to the managed interest process described in subparagraph (c)(4) of Exchange Rule 518, and the evaluation process described in subparagraph (c)(5) of Exchange Rule 518.

The Exchange also proposes to amend Rule 518(d) to incorporate references to cAOAO orders. Specifically, the Exchange proposes to amend Rule 518(d)(1) to provide that, in order to initiate a Complex Auction upon receipt, a Complex Auction-eligible order must be designated as cAOA or cAOAO. Also, the order must meet the criteria described in Interpretation and Policy .03(b) of Exchange Rule 518 regarding the URIP.<sup>22</sup> Also, a complex order not designated as cAOA or cAOAO (*i.e.*, a complex order considered by default to be “do not auction on arrival” by the System) may: (i) join a Complex Auction in progress at the time of receipt; (ii) become a Complex Auction-eligible order after resting on the Strategy Book and automatically join a Complex Auction then in effect for the complex strategy; or (iii) initiate a Complex Auction if it meets the criteria described in Interpretation and Policy .03(a) of Exchange Rule 518 regarding the IIP or .03(c) of Exchange Rule 518 regarding the RIP.

Aside from including references to cAOAO orders, the proposal makes no changes to the operation of Rule 518(d)(1).

The Exchange also proposes to amend Exchange Rule 518(d)(9) to add a reference to cAOAO orders. The title of Rule 518(d)(9) as amended will read, “Processing of Non-cAOA or cAOAO Complex Orders.” The text of Rule 518(d)(9) as amended will provide that a complex order not designated as cAOA or cAOAO will either be: (i) executed in full at a single price or at multiple prices up to its limit price, with remaining contracts placed on the

<sup>22</sup> Upon receipt of a complex order when the complex strategy is open, the System will calculate an Upon Receipt Improvement Percentage (“URIP”) value, which is a defined percentage of the current dcEBBO bid/ask differential. Such percentage will be defined by the Exchange and communicated to Members via Regulatory Circular. If a Complex Auction-eligible Order is priced equal to, or improves, the URIP value and is also priced to improve other complex orders and/or quotes resting at the top of the Strategy Book, the complex order will be eligible to initiate a Complex Auction. See Interpretations and Policies .03(b) of Exchange Rule 518.

Strategy Book; (ii) executed until the order exhausts the opposite side dcEBBO, at which time the order will be placed on the Strategy Book and evaluated for Complex Auction eligibility; or (iii) cancelled. Aside from adding a reference for cAOAO orders, the proposal makes no changes to the operation of Rule 518(d)(9).

The Exchange believes the proposed changes will allow the Exchange to effectively implement the proposed cAOAO order type.

#### ii. Complex Attributable Order Type

The Exchange proposes to amend Exchange Rule 518, Complex Orders, to adopt a new order type, Complex Attributable Order.<sup>23</sup> This proposed rule change is substantively identical to a rule change filed by the Exchange's affiliate, MIAX Options.<sup>24</sup>

Currently, the Exchange offers an Attributable Order<sup>25</sup> in its simple market.<sup>26</sup> Current Exchange Rule 516(e) states that an Attributable Order is a market<sup>27</sup> or limit order<sup>28</sup> which displays the user firm ID for purposes of trading on the Exchange. Use of Attributable Orders is voluntary. Attributable Orders entered into the Exchange System will be available for execution but may not display the user firm ID for all Exchange processes. The Exchange will issue a Regulatory Circular specifying the Exchange processes and the class(es) of securities for which the Attributable Order type shall be available.<sup>29</sup> Currently, an Attributable Order is available for all option classes<sup>30</sup> and will display the Executing Broker MPID<sup>31</sup> for new and updated simple orders on the MIAX Order ("MOR") Feed and will also

display the Executing Broker MPID for certain liquidity seeking events such as opening/reopening imbalances or the opening route mechanism on the Administrative Information Subscriber ("AIS") Feed.

The Exchange now proposes to adopt new subparagraph (8) to Exchange Rule 518(b) which will similarly provide that a Complex Attributable Order is a complex market or limit order which displays the user firm ID for purposes of trading on the Exchange. Proposed Rule 518(b)(8) further states that the use of Complex Attributable Orders is voluntary. Complex Attributable Orders entered into the Exchange System will be available for execution but may not display the Executing Broker ID for all Exchange processes. Complex Attributable Orders will be used similarly to Attributable Orders on the simple market.

If enabled, the Executing Broker MPID will be displayed on the MOR Feed for new and updated complex orders, and on the AIS Feed when a Complex Attributable Order initiates or participates in the following events: a cPRIME Auction, a Complex Auction, or a Complex Liquidity Exposure Process ("cLEP") Auction. The Complex Attributable Order type can be activated on an order-by-order basis with the default set to off. The Exchange will issue a Regulatory Circular specifying the Exchange processes and the class(es) of securities for which the Complex Attributable Order type shall be available.<sup>32</sup>

#### iii. Complex PRIME Through MPC

The Exchange proposes to amend Interpretation and Policy .05 of Exchange Rule 518 to exclude cPRIME Orders from the Complex MIAX Emerald Price Collar Protection provided to complex orders as described

in paragraph (f)(1) of the Rule. This proposed rule change is identical to a rule change filed by the Exchange's affiliate, MIAX Options.<sup>33</sup>

#### Background

In December of 2018, the Exchange adopted rules governing the trading in, and detailing the functionality of the MIAX Emerald System in the handling of, complex orders on the Exchange.<sup>34</sup> In order to further support the trading of complex orders on the Exchange, the Exchange adopted an additional price protection feature for complex orders, the Complex MIAX Emerald Price Collar ("MPC").<sup>35</sup> The MPC price protection feature is designed to help maintain a fair and orderly market by helping to mitigate the potential risk of executions at prices that are extreme and potentially erroneous.

More specifically, the MPC price protection feature is an Exchange-wide price protection mechanism under which a complex order or eQuote to sell will not be displayed or executed at a price that is lower than the opposite side cNBBO<sup>36</sup> at the time the MPC is assigned by the System (*i.e.*, upon receipt or upon opening) by more than a specific dollar amount expressed in \$0.01 increments (the "MPC Setting"), and under which a complex order or eQuote to buy will not be displayed or executed at a price that is higher than the opposite side cNBBO offer at the time the MPC is assigned by the System by more than the MPC Setting (each the "MPC Price").<sup>37</sup> All complex orders, together with cAOC eQuotes and cIOC eQuotes (as defined in Interpretations and Policies .02(c)(1) and (2) of Exchange Rule 518) (collectively, "eQuotes"), are subject to the MPC price protection feature.<sup>38</sup>

When the Exchange began its operations in December of 2018, the Exchange Rulebook contained three complex order types: Complex

<sup>23</sup> See proposed Rule 518(b)(8).

<sup>24</sup> See Securities Exchange Act Release No. 89085 (June 17, 2020), 85 FR 37719 (June 23, 2020) (SR-MIAX-2020-16) (amending MIAX Options Exchange Rule 518, Complex Orders, to adopt a new Complex Attributable Order type); see also MIAX Options Exchange Rule 518(b)(8).

<sup>25</sup> See Exchange Rule 516(e).

<sup>26</sup> The Exchange has a Simple Order Book, which is the Exchange's regular electronic book of orders and quotes. See Exchange Rule 518(a)(15). The Exchange also has a Strategy Order book, which is the Exchange's electronic book of complex orders and complex quotes. See Exchange Rule 518(a)(17).

<sup>27</sup> A market order is an order to buy or sell a stated number of option contracts at the best price available at the time of execution. See Exchange Rule 516(a).

<sup>28</sup> A limit order is an order to buy or sell a stated number of option contracts at a specified price or better. See Exchange Rule 516(b).

<sup>29</sup> See Exchange Rule 516(e).

<sup>30</sup> See MIAX Emerald Regulatory Circular 2019-28, Attributable Order (February 28, 2019) available at [https://www.miaxoptions.com/sites/default/files/circular-files/MIAX\\_Emerald\\_RC\\_2019\\_28.pdf](https://www.miaxoptions.com/sites/default/files/circular-files/MIAX_Emerald_RC_2019_28.pdf).

<sup>31</sup> An MPID is a Market Participant Identifier used by the Exchange.

<sup>32</sup> The ability to display information pertaining to a single order depends upon the Exchange's ability to broadcast that information to its members. This is currently accomplished through the Exchange's market data products, which, for example, includes the Administrative Information Subscriber Feed ("AIS"). Thus, the functionality of a Complex Attributable Order is linked to what is technologically feasible through the Exchange's market data products. The definition of a Complex Attributable Order will acknowledge this relationship and allow the functionality of the Complex Attributable Order type to develop and be deployed correspondingly with technical advances related to its market data products. In its definition of a Complex Attributable Order, the Exchange proposes to state that, "Complex Attributable Orders entered into the Exchange System will be available for execution but may not display the user firm ID for all Exchange processes." This will serve to put Emerald members on notice that the functionality of a Complex Attributable Order to display the user firm ID, as it continually develops, may not be available during all Exchange processes.

<sup>33</sup> See Securities Exchange Act Release No. 89206 (July 1, 2020), 85 FR 41079 (July 8, 2020) (SR-MIAX-2020-19) (amending MIAX Options Exchange Rule 518, Complex Orders, to exclude cPRIME Orders from the Complex MIAX Options Price Collar Protection provided to complex orders as described in the Rule); see also MIAX Options Exchange Rule 532(b)(6)(i).

<sup>34</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).

<sup>35</sup> *Id.*

<sup>36</sup> The cNBBO is calculated using the NBBO for each component of a complex strategy to establish the best net bid and offer for a complex strategy. See Exchange Rule 518(a)(2).

<sup>37</sup> See Interpretations and Policies .05(f) of Exchange Rule 518.

<sup>38</sup> See Interpretations and Policies .05(f)(1) of Exchange Rule 518.

Customer Cross (“cC2C”),<sup>39</sup> Complex Qualified Contingent Cross (“cQCC”),<sup>40</sup> and cPRIME,<sup>41</sup> which, by definition, became subject to the MPC price protection. The Exchange rules exclude these three new complex order types from certain price protection features available on the Exchange.<sup>42</sup> Specifically, in Interpretation and Policy .05(d) of Rule 518, it is stated that the Implied Away Best Bid or Offer (“ixABBO”) Price Protection feature is not available for cPRIME Orders, cC2C Orders, and cQCC Orders. The ixABBO protection was not available initially because this type of protection wasn’t necessary for these complex order types. Specifically, with respect to cPRIME Orders, a cPRIME Agency Order is received by the Exchange, and guaranteed an execution against, a contra-side order at a single price or at multiple prices with a “stop” price outside of which the cPRIME Agency Order, the contra-side order, and auction responses will not be executed.

The Exchange also excluded cPRIME Orders, cC2C Orders and cQCC Orders from the MIAX Emerald Order Monitor for Complex Orders (“cMOM”) stating in its filing, “that cPRIME Orders, cC2C Orders and cQCC Orders are all guaranteed an execution at a price or prices determined by the participants, and cPRIME Orders are subject to further price improvement. Therefore, the cMOM price protection feature isn’t necessary for these complex order types, and thus these complex orders types will not be rejected based upon cMOM price parameters.”<sup>43</sup>

For similar reasons, the Exchange now proposes to amend Interpretation and Policy .05(f)(1) of Exchange Rule 518. As amended, Interpretation and Policy .05(f)(1) of Exchange Rule 518 will state that, all complex orders (excluding cPRIME Orders),<sup>44</sup> together with AOC eQuotes and cIOC eQuotes (as defined in Interpretation and Policy .02(c)(1) and (c) of Exchange Rule 518) (collectively “eQuotes”), are subject to the MPC price protection feature.

A cPRIME Order is a paired order with an established minimum execution price that must meet certain defined internal criteria to be eligible to participate in a cPRIME Auction. Specifically, the initiating price for a cPRIME Agency Order must be better

than (inside) the icEBBO<sup>45</sup> for the strategy and any other complex orders on the Strategy Book.<sup>46</sup> The System will reject cPRIME Agency Orders submitted with an initiating price that is equal to or worse than (outside) the icEBBO or any other complex orders on the Strategy Book.<sup>47</sup> Because of these requirements, the Exchange believes that the MPC protection for cPRIME Orders is unnecessary, and in certain occasions, prevents orders that are otherwise eligible for participation in the cPRIME process from being accepted by the Exchange. Further, a cPRIME Order is a paired order, and the Agency side of a cPRIME Order is effectively executed when received (and, in the case of cPRIME Orders, subject to price improvement) because it is a paired order with a guaranteed execution.

The following examples demonstrate the current behavior as compared to the proposed behavior.

Current cPRIME Evaluation Subject to MPC Protection

*Example 1A* The auction start price (“ASP”) of a Complex PRIME order cannot be outside the MPC opposite the Agency side

MIAX Emerald Price Collar Value

(MPCV) = 0.25

cEBBO 3.00 × 4.00

cNBBO 3.00 × 3.50

MPC = (3.00 – 0.25) × (3.50 + 0.25) = 2.75 × 3.75

An incoming cPRIME Order is received where the ASP of the Agency order is to buy complex strategies at a price of 3.80. Because the ASP of the Agency order to buy at 3.80 is outside the opposite side MPC of 3.75 (cNBO plus the MPCV), the cPRIME Order is rejected.

Proposed cPRIME Evaluation Without MPC Protection

*Example 1B* The auction start price of a Complex PRIME Order CAN be outside the MPC opposite the Agency side

MIAX Emerald Price Collar Value

(MPCV) = 0.25

<sup>45</sup> The Implied Complex MIAX Emerald Best Bid or Offer or “icEBBO” is a calculation that uses the best price from the Simple Order Book for each component of a complex strategy including displayed and non-displayed interest. For stock-option orders, the icEBBO for a complex strategy will be calculated using the best price (whether displayed or non-displayed) on the Simple Order Book in the individual option component(s), and the NBBO in the stock component. See Exchange Rule 518(a)(12).

<sup>46</sup> The “Strategy Book” is the Exchange’s electronic book of complex orders and complex quotes. See Exchange Rule 518(a)(17).

<sup>47</sup> See Interpretations and Policies .12(a)(i) of Exchange Rule 515A.

cEBBO 3.00 × 4.00

cNBBO 3.00 × 3.50

MPC = (3.00 – 0.25) × (3.50 + 0.25) = 2.75 × 3.75

An incoming cPRIME Order is received where the ASP of the Agency Order is to buy complex strategies at a price of 3.80. Although the ASP of the Agency Order to buy at 3.80 is outside the opposite side MPC of 3.75 (cNBO plus the MPCV), the cPRIME Order is accepted and initiates an auction.

Proposed cPRIME Evaluation Without MPC Protection When Inside the icEBBO

*Example 2A* The auction start price of a Complex PRIME Order CAN be outside the MPC opposite the Agency side, and accepted if inside the icEBBO

MIAX Emerald Price Collar Value (MPCV) = 0.25

Strategy +1A+1B

Option A EBBO<sup>48</sup> 1.00 × 1.50

Option B EBBO 2.00 × 2.50

icEBBO 1(1.00 + 2.00) × 1(1.50 + 2.50) = 3.00 × 4.00

Option A NBBO 1.00 × 1.30

Option B NBBO 2.00 × 2.20

cNBBO 1(1.00 + 2.00) × 1(1.30 + 2.20) = 3.00 × 3.50

MPC = (3.00 – 0.25) × (3.50 + 0.25) = 2.75 × 3.75

An incoming cPRIME Order is received where the ASP of the Agency Order is to buy complex strategies at a price of 3.80. The ASP of the Agency Order to buy at 3.80 is permitted outside the opposite side MPC of 3.75 (cNBO plus the MPCV), and it is inside the icEBBO of 3.00 × 4.00; therefore the cPRIME Order is accepted and initiates an auction.

Proposed cPRIME Evaluation Without MPC Protection When Outside the icEBBO

*Example 2B* The auction start price of a Complex PRIME Order CAN be outside the MPC opposite the Agency side, but is rejected if outside the icEBBO<sup>49</sup>

MIAX Emerald Price Collar Value (MPCV) = 0.25

Strategy +1A+1B

Option A EBBO 1.00 × 1.50

<sup>48</sup> The term “EBBO” means the best bid or offer on the Simple Order Book on the Exchange. See Exchange Rule 518(a)(10).

<sup>49</sup> The initiating price for a cPRIME Agency Order must be better than (inside) the icEBBO for the strategy and any other complex orders on the Strategy Book. The System will reject cPRIME Agency Orders submitted with an initiating price that is equal to or worse than (outside) the icEBBO or any other complex orders on the Strategy Book. See Interpretations and Policies .12(a)(i) of Exchange Rule 515A.

<sup>39</sup> See Exchange Rule 518(b)(5).

<sup>40</sup> See Exchange Rule 518(b)(6).

<sup>41</sup> See Exchange Rule 518(b)(7).

<sup>42</sup> See *supra* note 34.

<sup>43</sup> *Id.*

<sup>44</sup> The Exchange notes that while cPRIME, cQCC, and cC2C Orders are all paired orders, the proposal is limited in scope to cPRIME Orders only.

Option B EBBO  $2.00 \times 2.25$   
 icEBBO  $1(1.00 + 2.00) \times 1(1.50 + 2.25)$   
 $= 3.00 \times 3.75$

Option A NBBO<sup>50</sup>  $1.00 \times 1.30$   
 Option B NBBO  $2.00 \times 2.20$   
 cNBBO  $1(1.00 + 2.00) \times 1(1.30 + 2.20)$   
 $= 3.00 \times 3.50$   
 MPC =  $(3.00 - 0.25) \times (3.50 + 0.25) =$   
 $2.75 \times 3.75$

An incoming cPRIME Order is received where the ASP of the Agency Order is to buy complex strategies at a price of 3.80. Although the ASP of the Agency Order to buy at 3.80 is permitted outside the opposite side MPC of 3.75 (cNBO plus the MPCV), it is outside the icEBBO of  $3.00 \times 3.75$ ; therefore the cPRIME Order is rejected.

#### iv. Complex Last To Fill

The Exchange proposes to amend Interpretation and Policy .12 of Exchange Rule 515A to remove the provision that precludes last priority in allocation from being available to Initiating Members<sup>51</sup> that submit cPRIME Agency Orders. This proposed rule change is identical to a rule change filed by the Exchange's affiliate, MIAX Options.<sup>52</sup>

Currently Interpretation and Policy .12(c)(v) of Exchange Rule 515A provides that the order allocation provisions contained in Rule 515A(a)(2)(iii) shall apply to cPRIME Auctions, provided that: (A) all references to contracts shall be deemed to be references to complex strategies as defined in Rule 518(a)(6); and (B) the last priority allocation option described in Rule 515A(a)(2)(iii)(L) is not available for Initiating Members that submit cPRIME Agency Orders. When the Exchange launched and adopted cPRIME functionality,<sup>53</sup> the Exchange stated that the last priority in allocation option described in Rule 515A(a)(2)(iii)(L)<sup>54</sup> is not available for

<sup>50</sup> The term "NBBO" means the national best bid or offer as calculated by the Exchange based on market information received by the Exchange from the appropriate Securities Information Processor ("SIP"). See Exchange Rule 518(a)(14).

<sup>51</sup> An "Initiating Member" initiates a PRIME Auction. See Exchange Rule 515A(a)(1). The term "Member" means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed "members" under the Exchange Act. See Exchange Rule 100.

<sup>52</sup> See Securities Exchange Act Release No. 89206 (July 1, 2020), 85 FR 41079 (July 8, 2020) (SR-MIAX-2020-19) (amending Interpretation and Policy .12 of MIAX Options Exchange Rule 515A to remove the provision that precludes last priority in allocation from being available to Initiating Members that submit cPRIME Agency Orders); see also Interpretations and Policies .12(c)(v) of MIAX Options Exchange Rule 515A.

<sup>53</sup> See *supra* note 34.

<sup>54</sup> If the Initiating Member elected to have last priority in allocation when submitting an Agency

Initiating Members that submit cPRIME Agency Orders. As, at that time, the Exchange did not believe that there was significant Member demand for the use of the last priority in allocation option in cPRIME Auctions, there was therefore no need to include it in the allocation model then in use for cPRIME Auctions.

The Exchange now believes that there is significant Member demand for the use of the last priority in [sic] allocation option in cPRIME Auctions, and proposes to amend its current rule to remove the provision that makes it unavailable for Initiating Members that submit cPRIME Agency Orders. The Exchange proposes to remove subsection (c)(v)(B) of Interpretation and Policy .12 in its entirety. New proposed subsection (c)(v) will provide that, the order allocation provisions contained in Rule 515A(a)(2)(iii) shall apply to cPRIME Auctions, provided that all references to contracts shall be deemed to be references to complex strategies as defined in Rule 518(a)(6).

#### v. ISO PRIME

The Exchange proposes to amend Exchange Rule 515A, MIAX Emerald Price Improvement Mechanism ("PRIME") and PRIME Solicitation Mechanism, to adopt a new ISO PRIME order type. This proposed rule change is identical to a rule change filed by the Exchange's affiliate, MIAX Options.<sup>55</sup>

PRIME is a process by which a Member may electronically submit for execution ("Auction") an order it represents as agent ("Agency Order") against principal interest, and/or an Agency Order against solicited interest.<sup>56</sup> A Member (the "Initiating Member") may initiate an Auction provided all of the following are met: (i) the Agency Order is in a class designated as eligible for PRIME as determined by the Exchange and within the designated Auction order eligibility size parameters as such size parameters are determined by the Exchange; (ii) the Initiating Member must stop the entire Agency Order as principal or with a solicited order at the better of the NBBO or the Agency Order's limit price (if the order is a limit order); (iii) with respect

Order to initiate an Auction against a single-price submission, the Initiating Member will be allocated only the amount of contracts remaining, if any, after the Agency Order is allocated to all other responses at the single price specified by the Initiating Member. See Exchange Rule 515A(a)(2)(iii)(L).

<sup>55</sup> See Securities Exchange Act Release No. 89991 (September 24, 2020), 85 FR 61782 (September 30, 2020) (SR-MIAX-2020-31) (amending MIAX Options Exchange Rule 515A, MIAX PRIME and PRIME Solicitation Mechanism, to adopt a new ISO PRIME Order type); see also Interpretations and Policies .08 of MIAX Options Exchange Rule 515A.

<sup>56</sup> See Exchange Rule 515A(a).

to Agency Orders that have a size of less than 50 contracts, if at the time of receipt of the Agency Order, the NBBO has a bid/ask differential of \$0.01, the System will reject the Agency Order; and (iv) Post-Only OQs<sup>57</sup> may not participate in PRIME as an Agency Order, principal interest or solicited interest.<sup>58</sup>

An Intermarket Sweep Order ("ISO") is defined in Exchange Rule 1400(i) as a limit order for an options series that, simultaneously with the routing of the ISO, one or more additional ISOs, as necessary, are routed to execute against the full displayed size of any Protected Bid,<sup>59</sup> in the case of a limit order to sell, or any Protected Offer,<sup>60</sup> in the case of a limit order to buy, for the options series with a price that is superior to the limit price of the ISO. A Member may submit an ISO to the Exchange only if it has simultaneously routed one or more additional Intermarket Sweep Orders to execute against the full displayed size of any Protected Bid, in the case of a limit order to sell, or Protected Offer, in the case of a limit order to buy, for an options series with a price that is superior to the limit price of the ISO. An ISO may be either an Immediate-Or-Cancel Order<sup>61</sup> or an order that expires on the day it is entered.<sup>62</sup>

The Exchange now proposes to implement an ISO PRIME order type ("ISO PRIME") that will allow the submission of an ISO into the PRIME. Specifically, an ISO PRIME is the transmission of two orders for crossing pursuant to Rule 515A, MIAX Emerald Price Improvement Mechanism ("PRIME") and PRIME Solicitation Mechanism, without regard for better priced Protected Bids or Protected Offers because the Member transmitting the ISO PRIME order to the Exchange has, simultaneously with the submission of the ISO PRIME order, routed one or more ISOs, as necessary,

<sup>57</sup> Post-Only Orders are defined in Rule 516(m). Post-Only Quotes are defined in Rule 517(a)(1)(i). Post-Only Orders and Post-Only Quotes are together referred to as "Post-Only OQ." See Exchange Rule 515(a).

<sup>58</sup> See Exchange Rule 515A(a)(1).

<sup>59</sup> A "Protected Bid" or "Protected Offer" means a Bid or Offer in an options series, respectively, that: (a) is disseminated pursuant to the OPRA Plan; and (b) is the Best Bid or Best Offer, respectively, displayed by an Eligible Exchange. See MIAX Options Exchange Rule 1400(p), which is incorporated into the Exchange Rules by reference.

<sup>60</sup> *Id.*

<sup>61</sup> An immediate-or-cancel order is an order that is to be executed in whole or in part upon receipt. Any portion not so executed is cancelled. An immediate-or-cancel order is not valid during the opening rotation process described in Rule 503. See Exchange Rule 516(c).

<sup>62</sup> See Exchange Rule 1400(i).

to execute against the full displayed size of any Protected Bid or Protected Offer that is superior to the starting PRIME Auction price, and has swept all interest in the Exchange's Book<sup>63</sup> priced better than the proposed Auction starting price.<sup>64</sup> Any execution(s) resulting from such sweeps shall accrue to the PRIME Order, meaning that any executions will be given to the agency side of the order.

The Exchange will accept an ISO PRIME provided that the order adheres to the current PRIME Order acceptance criteria outlined above, except that the initiating Member is only required to stop the entire Agency Order as principal or with a solicited order at the Agency Order's limit price (if the order is a limit order). Therefore, the Initiating Member may initiate an Auction provided that all of the following are met: (i) the Agency Order is in a class designated as eligible for PRIME as determined by the Exchange and within the designated Auction order eligibility size parameters as such size parameters are determined by the Exchange; (ii) the Initiating Member must stop the entire Agency Order as principal or with a solicited order at the better of the NBBO or the Agency Order's limit price (if the order is a limit order); (iii) with respect to Agency Orders that have a size of less than 50 contracts, if at the time of receipt of the Agency Order, the NBBO has a bid/ask differential of \$0.01, the System will reject the Agency Order; and (iv) Post-Only OQs may not participate in PRIME as an Agency Order, principal interest or solicited interest.<sup>65</sup>

The Exchange will process the ISO PRIME order in the same manner that it currently processes PRIME Orders, except that it will initiate a PRIME Auction without protecting away prices. The Member transmitting the ISO PRIME order will bear the responsibility to clear all better priced interest away simultaneously with the submission of the ISO PRIME order to the Exchange.<sup>66</sup>

The Exchange also proposes to adopt a new allocation methodology specifically for Market Maker<sup>67</sup> interest

that is executed during an ISO PRIME Auction.<sup>68</sup> Currently, allocation in a PRIME Auction follows the order allocation methodology defined in Exchange Rule 515A(a)(2)(iii), which provides that Priority Customer<sup>69</sup> Orders resting on the Book before, or that are received during, the Response Time Interval<sup>70</sup> and Priority Customer RFR<sup>71</sup> responses shall, collectively have first priority to trade against the Agency Order. The allocation of an Agency Order against the Priority Customer Orders resting in the Book, Priority Customer Orders received during the Response Time Interval, and Priority Customer RFR responses shall be in the sequence in which they are received by the System.<sup>72</sup> Market Maker priority quotes<sup>73</sup> and RFR responses from Market Makers with priority quotes will collectively have second priority. The allocation of Agency Orders against these contra side quotes and RFR responses shall be on a size pro rata

and "Registered Market Makers" collectively. See Exchange Rule 100.

<sup>68</sup> See proposed Interpretations and Policies .12(c)(v) of Rule 515A.

<sup>69</sup> The term "Priority Customer" means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). See Exchange Rule 100.

<sup>70</sup> The "Response Time Interval" means the period of time during which responses to the Request for Responses ("RFR") may be entered. The RFR timer is 100 milliseconds. See MIAx Emerald Regulatory Circular 2019-65, MIAx Emerald PRIME Timer Effective August 26, 2019 (August 13, 2019) available at [https://www.miaxoptions.com/sites/default/files/circular-files/MIAx\\_Emerald\\_RC\\_2019\\_65.pdf](https://www.miaxoptions.com/sites/default/files/circular-files/MIAx_Emerald_RC_2019_65.pdf).

<sup>71</sup> When the Exchange receives a properly designated Agency Order for auction processing, a RFR detailing the option, side, size, and initiating price will be sent to all subscribers of the Exchange's data feeds. See Exchange Rule 515A(a)(2)(i)(B).

<sup>72</sup> See Exchange Rule 515A(a)(2)(iii)(B).

<sup>73</sup> To be considered a priority quote, at the time of execution, each of the following standards must be met: (A) the bid/ask differential of a Market Maker's two-sided quote pair must be valid width (no wider than the bid/ask differentials outlined in Exchange Rule 603(b)(4)); (B) the initial size of both or the Market Maker's bid and the offer must be in compliance with the requirements of Exchange Rule 604(b)(2); (C) the bid/ask differential of a Market Maker's two-sided quote pair must meet the priority quote width requirements defined in Exchange Rule 517(b)(1)(ii) for each option; and (D) either of the following are true: 1. At the time a locking or crossing quote or order enters the System, the Market Maker's two-sided quote pair must be valid width for that option and must have been resting on the Book; or 2. Immediately prior to the time the Market Maker enters a new quote that locks or crosses the EBBO, the Market Maker must have had a valid width quote already existing (*i.e.*, exclusive of the Market Maker's new marketable quote or update) among his two-sided quotes for that option. See Exchange Rule 517(b). The term "EBBO" means the best bid or offer on the Exchange. See Exchange Rule 100.

basis<sup>74</sup> as defined in Rule 514(c)(2).<sup>75</sup> Professional Interest<sup>76</sup> Orders resting in the Book, Professional Interest Orders placed in the Book during the Response Time Interval, Professional Interest quotes, and Professional Interest RFR responses will collectively have third priority. The allocation of Agency Orders against these contra side orders and RFR Responses shall be on a size pro rata basis as defined in Rule 514(c)(2).<sup>77</sup>

The Exchange now proposes to amend Exchange Rule 515A(a)(2)(iii)(C) to adopt a new allocation for Market Maker priority quotes at the conclusion of an Auction for an ISO PRIME order. The Exchange notes that the proposed rule is identical to MIAx Options Exchange Rule 515A(a)(2)(iii)(C). The proposed rule text will state that, at the conclusion of an Auction for an ISO PRIME order, the allocation of Agency Orders at the final Auction price shall be: (i) to Market Makers that traded in the associated ISO sweep, for up to the full size of such Market Makers' refreshed priority quotes, as well as any RFR responses submitted by those Market Makers; (ii) to those Market Makers with quotes at the Auction start price that were resting and any RFR responses submitted by those Market Makers at the final Auction price; and (iii) to all other Market Makers that did not trade in the associated ISO sweep and did not have resting quotes at the Auction start price with joining interest at the final Auction price that was submitted during the Auction. If two or more Market Makers are entitled to priority under (i), (ii) or (iii) above, priority will be afforded to the extent practicable on a pro-rata basis.

This can be demonstrated in the following examples, which assume away markets priced better than the auction start price have been swept.

*Example 1—(Current PRIME Allocation) Single Price Submission, Priority Customer has first priority and Market Maker with priority quotes has second priority*

<sup>74</sup> Exchange Rule 514(c)(2), Pro-Rata Allocation, states that, under this method, resting quotes and orders on the Book are prioritized according to price. If there are two or more quotes or orders at the best price then the contracts are allocated proportionally according to size (in a pro-rata fashion). If the executed quantity cannot be evenly allocated, the remaining contracts will be distributed one at a time based upon price-size-time priority.

<sup>75</sup> See Exchange Rule 515A(a)(2)(iii)(C).

<sup>76</sup> The term "Professional Interest" means (i) an order that is for the account of a person or entity that is not a Priority Customer, or (ii) an order or non-priority quote for the account of a Market Maker. See Exchange Rule 100.

<sup>77</sup> See Exchange Rule 515A(a)(2)(iii)(D).

<sup>63</sup> The term "Book" means the electronic book of buy and sell orders and quotes maintained by the System. See Exchange Rule 100.

<sup>64</sup> The Exchange notes that it has an ISO Trade Through surveillance in place that will identify and capture when an order provider marks an order (standard or PRIME) ISO and the order possibly trades through a protected bid or ask price at an away exchange. The Exchange will monitor the NBBO prior to and after the order trades on the Exchange to detect potential trade through violations.

<sup>65</sup> See Exchange Rule 515A(a)(1).

<sup>66</sup> See *supra* note 64.

<sup>67</sup> The term "Market Makers" refers to "Lead Market Makers", "Primary Lead Market Makers"

MM3 = \$1.15 – \$1.25 100 × 100  
(priority quote)<sup>78</sup>

EBBO = \$1.15 – \$1.25 100 × 100

NBBO = \$1.15 – \$1.25 200 × 200

Agency Order to buy 50 contracts with a limit price of \$1.20

Initiating Member's Contra Order selling 50 contracts with a single stop price of \$1.20

RFR sent identifying the option, side and size, with initiating price of \$1.20 (Auction Starts)

- @10 milliseconds MM1 response received (did not have a priority quote on the Book), AOC eQuote to Sell 10 at \$1.18
- @30 milliseconds BD4 response received, AOC order to Sell 10 at \$1.18
- @50 milliseconds Priority Customer response received, AOC order to Sell 15 at \$1.18
- @75 milliseconds MM3 response received, AOC eQuote to Sell 20 at \$1.18
- 100 milliseconds (Auction Ends)

Under this scenario the Agency Order would be executed as follows:

1. 15 contracts trade with Priority Customer @ \$1.18
2. 20 contracts trade with MM3 @ \$1.18
3. 8 contracts trade with MM1 @ \$1.18
4. 7 contracts trade with BD4 @ \$1.18 (This fills the entire Agency Order and Contra Order does not receive an execution)

*Example 2—(Proposed ISO PRIME Allocation) Single Price Submission, Priority Customer has first priority and Market Maker (who initially traded as part of the associated ISO Sweep) with joining quotes at the final Auction price has second priority*

MM3 = \$1.15 – \$1.17 100 × 10 (priority quote)

EBBO = \$1.15 – \$1.17 100 × 10

NBBO = \$1.15 – \$1.17 300 × 210

ISO PRIME Agency Order to buy 50 contracts with a limit price of \$1.20 is received.

It will ISO Sweep resting liquidity priced better than the Auction start price of \$1.20.

Under this scenario the Agency Order would be executed as follows:

1. 10 contracts trade with MM3 @ \$1.17
- Contemporaneously the balance of the ISO PRIME Agency Order initiates a PRIME Auction to buy 40 contracts with a limit price of \$1.20
- Initiating Member's Contra Order selling 50 contracts with a single stop price of \$1.20

RFR sent identifying the option, side and size, with initiating price of \$1.20

(Auction Starts)

- @10 milliseconds MM1 response received, AOC eQuote to Sell 10 at \$1.18
- @30 milliseconds BD4 response received, AOC order to Sell 10 at \$1.18
- @40 milliseconds Priority Customer response received, AOC order to Sell 15 at \$1.18
- @65 milliseconds MM3 (who traded as part of the initial sweep), response received, AOC eQuote to Sell 40 at \$1.18
- 100 milliseconds (Auction Ends)

Under this scenario the Agency Order would be executed as follows:

2. 15 contracts trade with Priority Customer @ \$1.18
3. 25 contracts trade with MM3 @ \$1.18 (This fills the entire Agency Order and Contra Order does not receive an execution)

*Example 3—(Proposed ISO PRIME Allocation) Single Price Submission, Market Maker who has a joining quote at a better price has priority and Market Maker (who has a resting quote at the Auction start price) that submits an RFR response at the final Auction price has priority*

MM1 = \$1.15 – \$1.17 10 × 10 (priority quote)

MM2 = \$1.15 – \$1.20 20 × 20 (priority quote)

MM3 = \$1.15 – \$1.21 20 × 20 (priority quote)

EBBO = \$1.15 – \$1.17 50 × 10

NBBO = \$1.15 – \$1.17 150 × 110

ISO PRIME Agency Order to buy 50 contracts with a limit price of \$1.20 is received.

It will ISO Sweep resting liquidity priced better than the Auction start price of \$1.20.

Under this scenario the Agency Order would be executed as follows:

1. 10 contracts trade with MM1 @ \$1.17
- Contemporaneously the balance of the ISO PRIME Agency Order initiates a PRIME Auction to buy 40 contracts with a limit price of \$1.20
- Initiating Member's Contra Order selling 50 contracts with a single stop price of \$1.20

RFR sent identifying the option, side and size, with initiating price of \$1.20 (Auction Starts)

- @10 milliseconds MM4 response received, AOC eQuote to Sell 30 at \$1.18
- @30 milliseconds MM3 response received, AOC eQuote to Sell 20 at \$1.19
- @75 milliseconds MM2 (who has a resting quote at the Auction Start Price), response received, AOC eQuote to Sell 20 at \$1.19

- 100 milliseconds (Auction Ends)

Under this scenario, the Agency Order would be executed as follows:

2. 30 contracts trade with MM4 @ \$1.18
3. 10 contracts trade with MM2 @ \$1.19 (This is the final Auction price and fills the entire Agency Order and Contra Order and MM3 does not receive an execution)

*Example 4—(Proposed ISO PRIME Allocation) Single Price Submission, Priority Customer has first priority and Market Maker (who initially traded as part of an ISO Sweep) with joining quotes has second priority, Market Maker with joining interest that is received during the associated ISO PRIME Auction that did not trade in the associated ISO sweep and did not have resting interest at the Auction start price receives last priority among Market Makers*

MM3 = \$1.15 – \$1.17 100 × 10 (priority quote)

EBBO = \$1.15 – \$1.17 100 × 10

NBBO = \$1.15 – \$1.17 300 × 210

ISO PRIME Agency Order to buy 50 contracts with a limit price of \$1.20 is received.

It will ISO Sweep resting liquidity priced better than the Auction start price of \$1.20.

Under this scenario, the Agency Order would be executed as follows:

1. 10 contracts trade with MM3 @ \$1.17
- Contemporaneously, the balance of the ISO PRIME Agency Order initiates a PRIME Auction to buy 40 contracts with a limit price of \$1.20
- Initiating Member's Contra Order selling 50 contracts with a single stop price of \$1.20

RFR sent identifying the option, side and size, with an initiating price of \$1.20

(Auction Starts)

- @10 milliseconds MM1 response received (did not have a priority quote on the Book), AOC eQuote to Sell 20 at \$1.18
- @30 milliseconds BD4 response received, AOC order to Sell 20 at \$1.18
- @40 milliseconds Priority Customer response received, AOC order to Sell 15 at \$1.18
- @65 milliseconds MM3 (who traded as part of the initial sweep), quote response received, AOC eQuote to Sell 20 at \$1.18
- @100 milliseconds (Auction Ends)

Under this scenario, the Agency Order would be executed as follows:

2. 15 contracts trade with Priority Customer @ \$1.18
3. 20 contracts trade with MM3 @ \$1.18
4. 3 contracts trade with MM1 @ \$1.18

<sup>78</sup>The term "priority quote" has the meaning set forth in Rule 517(b)(1)(i). See Exchange Rule 100. See also supra note 73.

5. 2 contracts trade with BD4 @\$1.18 (This fills the entire Agency Order and the Contra Order does not receive an execution)

The Exchange believes this allocation methodology, used only for Market Maker priority interest and only at the conclusion of an ISO PRIME Auction, will provide an additional incentive for Market Makers to provide their most aggressive quotes to the market throughout the entire trading session. The proposed allocation methodology is identical to MIAX Options Exchange Rule 515A(a)(2)(iii)(C).

The Exchange also proposes to amend Rule 515A(a)(2)(iii)(J) which currently states, notwithstanding (a)(2)(iii)(C), (D) above, if the Auction does not result in price improvement over the Exchange's disseminated price at the time the Auction began, resting unchanged quotes or orders that were disseminated at the best price before the Auction began shall have priority after any Priority Customer order priority and the Initiating Member's priority (40%) have been satisfied. The new proposed rule text will provide, notwithstanding (a)(2)(iii)(C), (D) above, provided the Auction is not for an ISO PRIME order, if the Auction does not result in price improvement over the Exchange's disseminated price at the time the Auction began, resting unchanged quotes or orders that were disseminated at the best price before the Auction began shall have priority after any Priority Customer order priority and the Initiating Member's priority (40%) have been satisfied. The Exchange notes that the proposed rule is identical to MIAX Options Exchange Rule 515A(a)(2)(iii)(J).

#### Implementation

The Exchange will announce the implementation of these changes in a Regulatory Circular to be published no later than 90 days following the operative date of the proposed rule. The implementation date will be no later than 90 days following the issuance of the Regulatory Circular.

### 2. Statutory Basis

#### i. cAOAO Order Type

MIAX believes that its proposed rule change regarding adopting a new Complex Auction-on-Arrival-Only ("cAOAO") order type is consistent with Section 6(b) of the Act<sup>79</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>80</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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in, securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that its proposal to adopt a cAOAO order type promotes just and equitable principles of trade, removes impediments to and perfects the mechanisms of a free and open market and a national market system and, in general, protects investors and the public interest. The Exchange believes it is reasonable to provide an opportunity for investors to seek to have their complex orders exposed for an opportunity for price improvement and to also provide investors the option to have such orders canceled if they are not filled. The Exchange believes its proposal to amend other portions of Exchange Rule 518 to describe the operation and behavior of a cAOAO order benefits investors and the public interest by providing information that investors can use to ascertain the suitability of this order type in relation to their investment objectives. Moreover, this proposed rule change is identical to a rule change filed by the Exchange's affiliate, MIAX Options to adopt a cAOAO order type.<sup>81</sup>

The Exchange believes its proposed rule change regarding a cAOAO order type promotes just and equitable principles of trade and removes impediments to and perfects the mechanisms of a free and open market and a national market system and, in general, protects investors and the public interest by providing an opportunity for investors to have their complex orders exposed for an opportunity for price improvement. Furthermore, the Exchange believes that it is appropriate to provide an order type that will (i) initiate a complex auction if eligible, and (ii) cancel the balance of such order if there is interest remaining at the conclusion of the auction.

#### ii. Complex Attributable Order Type

The Exchange believes that its proposed rule change regarding adopting a new Complex Attributable Order type is consistent with Section 6(b) of the Act<sup>82</sup> in general, and furthers the objectives of Section 6(b)(5) of the

Act<sup>83</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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in, securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes its proposal to adopt a Complex Attributable Order promotes just and equitable principles of trade, and removes impediments to and perfects the mechanisms of a free and open market system and, in general, protects investors and the public interest by introducing an order type for use on the complex market that is currently available for use on the Exchange's simple market. Use of Complex Attributable Orders will be voluntary and will provide Members of the Exchange similar order types for use on both the simple market and the complex market for use during liquidity seeking events to facilitate executions. Additionally, this proposed rule change is substantively identical to a rule change filed by the Exchange's affiliate, MIAX Options to adopt a Complex Attributable Order type.<sup>84</sup>

#### iii. Complex PRIME Through MPC

The Exchange believes that its proposed rule change regarding excluding cPRIME Orders from the Complex MIAX Emerald Price Collar Protection ("MPC") is consistent with Section 6(b) of the Act<sup>85</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>86</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 free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes its proposal to exclude cPRIME Orders from the MPC promotes just and equitable principles of trade, removes impediments to and perfects the mechanisms of a free and open market and a national market system, and in general, protects investors and the public interest by

<sup>79</sup> 15 U.S.C. 78f(b).

<sup>80</sup> 15 U.S.C. 78f(b)(5).

<sup>81</sup> See *supra* note 24.

<sup>82</sup> 15 U.S.C. 78f(b).

<sup>83</sup> 15 U.S.C. 78f(b)(5).

<sup>84</sup> 15 U.S.C. 78f(b)(5).

<sup>85</sup> 15 U.S.C. 78f(b)(5).

<sup>86</sup> 15 U.S.C. 78f(b)(5).

<sup>79</sup> 15 U.S.C. 78f(b).

<sup>80</sup> 15 U.S.C. 78f(b)(5).

<sup>81</sup> See *supra* note 10.

<sup>82</sup> 15 U.S.C. 78f(b).



allowing otherwise eligible orders to benefit from submission to the cPRIME mechanism. The Exchange believes that, if not excluded, the MPC feature could unnecessarily impede certain transactions in this order type that are submitted with contra-side participation and guaranteed executions for the Agency side. The Agency side of a cPRIME Order is effectively executed when received (and, in the case of cPRIME Orders, subject to price improvement) because it is a paired order with a guaranteed execution. The Exchange believes that accepting these orders, rather than rejecting them, protects investors that have established crossing orders at a specific execution price, and in the case of cPRIME Orders, allows the opportunity for further price improvement. Additionally, this proposed rule change is identical to a rule change filed by the Exchange's affiliate, MIAX Options, which excluded cPRIME Orders from MPC Protection.<sup>87</sup>

#### iv. Complex Last To Fill

The Exchange believes that its proposed rule change regarding last priority in allocation for Initiating Members submitting cPRIME Agency Orders is consistent with Section 6(b) of the Act<sup>88</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>89</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 free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that its proposal to allow Initiating Members that submit cPRIME Agency Orders to the Exchange to elect to have last priority in allocation promotes just and equitable principles of trade, removes impediments to and perfects the mechanisms of a free and open market and a national market system and, in general, protects investors and the public interest by offering an additional allocation choice which could result in an increase of cPRIME Agency Orders being submitted to the Exchange. The Exchange believes offering last priority in allocation gives the Initiating Member additional flexibility and control over cPRIME Agency Orders which and may

result in the submission of more cPRIME Orders to the Exchange resulting in an increase of price improvement opportunities.

Additionally, this proposed rule change is identical to a rule change filed by the Exchange's affiliate, MIAX Options, which removed the provision that precluded last priority in allocation from being available to Initiating Members that submit cPRIME Agency Orders.<sup>90</sup>

#### v. ISO PRIME

The Exchange believes that its proposed rule change regarding a new ISO PRIME order is consistent with Section 6(b) of the Act<sup>91</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>92</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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in, securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The proposed rule change promotes just and equitable principles of trade and removes impediments to and perfects the mechanisms of a free and open market in that it promotes competition as described below. Specifically, the proposal allows the Exchange to offer its Members an order type that is already offered by other exchanges.<sup>93</sup> In addition, the proposal benefits traders and investors because it adds a new order type for seeking price improvement through the PRIME. ISO PRIME orders will also be subject to all eligibility requirements that currently apply to PRIME orders. The Initiating Member, simultaneous with the routing of the ISO PRIME order to the Exchange, remains responsible for (i) routing one

or more ISOs, as necessary, to execute against the full displayed size of any Protected Bid or Protected Offer that is superior to the starting PRIME Auction price and (ii) sweeping all interest in the Exchange's Book priced better than the proposed Auction starting price. Finally, the proposal does not unfairly discriminate among Members because all Members of the Exchange are eligible to submit an ISO PRIME order.

The Exchange's proposal to amend Emerald Rule 515A(a)(2)(iii)(C) to adopt a new allocation at the conclusion of an ISO PRIME Auction for Market Maker priority quotes and RFR responses from Market Makers with priority quotes, that participate in the associated ISO sweep, promotes just and equitable principles of trade, perfects the mechanisms of a free and open market and a national market system and, in general, benefits investors as it provides an additional incentive to Market Makers to provide their most aggressive quotes to the market at all times. Prioritizing Market Maker interest such that Market Makers that trade in the associated ISO sweep that also have joining interest at the final Auction price receive first priority in allocation provides an incentive to Market Makers to have their most aggressive quotes on the Book in order to participate in any potential ISO sweeps.

The Exchange's proposal does not change the existing allocation priority for PRIME Auctions, and is narrowly tailored to allocation priority only among Market Makers and only at the conclusion of a PRIME Auction initiated by an ISO PRIME order. Additionally, the proposed rule is identical to a rule change filed by the Exchange's affiliate, MIAX Options, to adopt a new allocation methodology specifically for Market Maker interest executed during an ISO PRIME Auction.<sup>94</sup>

Additionally, the Exchange believes its proposal to amend Exchange Rule 515A(a)(2)(iii)(J) to clarify that the subsection does not apply to Auctions for ISO PRIME orders, promotes just and equitable principles of trade, and removes impediments to and perfects the mechanisms of a free and open market and a national market system and, in general, protects investors and the public interest by removing any ambiguity in the Exchange's Rulebook about the type of Auctions subsection (J) pertains to. Current subsection (J) provides additional clarifying language concerning the priority of allocations at the conclusion of a PRIME Auction that does not result in price improvement

<sup>87</sup> See *supra* note 52.

<sup>88</sup> 15 U.S.C. 78f(b).

<sup>89</sup> 15 U.S.C. 78f(b)(5).

<sup>90</sup> See Nasdaq ISE Exchange Rule, Options 3, Section 13, Supplementary Material .08 (stating that a PIM ISO Order is the transmission of two orders for crossing pursuant to this Rule without regard for better priced Protected Bids or Protected Offers (as defined in Options 5, Section 1) because the Member transmitting the PIM ISO to the Exchange has, simultaneously with the routing of the PIM ISO, routed one or more ISOs, as necessary, to execute against the full displayed size of any Protected Bid or Protected Offer that is superior to the starting PIM auction price and has swept all interest in the Exchange's book priced better than the proposed auction starting price); see also Interpretations and Policies .08 of MIAX Options Exchange Rule 515A.

<sup>94</sup> See *supra* note 55; see also MIAX Options Exchange Rule 515A(a)(2)(iii)(C).

<sup>87</sup> See *supra* note 33.

<sup>88</sup> 15 U.S.C. 78f(b).

<sup>89</sup> 15 U.S.C. 78f(b)(5).

over the Exchange's disseminated price at the time the Auction began stating that, "resting unchanged quotes or orders that were disseminated at the best price before the Auction began shall have priority after any Priority Customer order priority. . . ." <sup>95</sup> The Exchange's proposal concerning allocation at the conclusion of an Auction for an ISO PRIME order provides a more nuanced and detailed hierarchy of allocation for Market Makers which would be applicable in the scenario contemplated by subsection (J). Therefore, the Exchange is proposing to exclude the application of subsection (J) to Auctions that are initiated by ISO PRIME orders. The Exchange believes this change eliminates any potential conflict regarding the application of the Exchange's rules and it is in the public interest for rules to be accurate and concise so as to eliminate the potential for confusion. The Exchange notes that the proposed rule is identical to MIAX Options Exchange Rule 515A(a)(2)(iii)(J).

The Exchange believes this change will benefit market participants as it encourages Market Makers to participate in ISO PRIME Auctions and will provide additional incentive to Market Makers to provide their most aggressive quotes to the market throughout the trading session and may also result in increased liquidity being available during the Auction. Additionally, this proposed rule change is identical to a rule change filed by Exchange's affiliate, MIAX Options, to adopt ISO PRIME orders. <sup>96</sup>

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

##### (i) cAOAO Order Type

The Exchange does not believe that the proposed rule change will impose any burden on inter-market competition but will rather promote inter-market competition as the Exchange is proposing an order type that operates and is functionally identical to an order type offered on other option exchanges. <sup>97</sup> The Exchange notes that it

operates in a highly competitive market in which market participants can readily direct order flow to competing venues who offer similar functionality. The Exchange believes the proposed rule change will enhance competition among the various markets for complex order execution, potentially resulting in more active complex order trading on all exchanges. Moreover, since the proposed rule change is identical to a rule change filed by the Exchange's affiliate, MIAX Options, <sup>98</sup> the Exchange does not believe that its proposal will impose any burden on inter-market competition as it would offer its Members similar functionality to that of the Exchange's affiliate.

The Exchange does not believe that the proposed rule change will impose any burden on intra-market competition as the Rules of the Exchange apply equally to all Exchange Members, and any Member of the Exchange may use the cAOAO order type.

##### (ii) Complex Attributable Order Type

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange does not believe that the proposed rule change to adopt a Complex Attributable Order will impose any burden on inter-market competition but rather may increase competition among exchanges as the Exchange is proposing an order type that operates and is functionally identical to other options exchanges. <sup>99</sup> The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues who offer similar functionality. The Exchange believes the proposed rule change will enhance competition among the various markets for complex order execution, potentially resulting in more active complex order trading on all exchanges. Moreover, since the proposed rule change is substantively identical to a

cancelled."; *see also* MIAX Options Exchange Rule 518(b)(9).

<sup>95</sup> *See supra* note 10.

<sup>96</sup> The Nasdaq ISE Exchange and Nasdaq MRX Exchange currently offer Attributable Complex Orders. *See* Nasdaq ISE Exchange, Options 3, Section 14, Complex Orders (b)(4) (explaining that one of the types of Complex Orders that may be entered is an Attributable Complex Order, which is "a Market or Limit Complex Order [that] may be designated as an Attributable Order"); *and* Nasdaq MRX Exchange, Options 3, Section 14, Complex Orders (b)(4) (explaining that one of the types of Complex Orders that may be entered is an Attributable Complex Order, which is "a Market or Limit Complex Order [that] may be designated as an Attributable Order"); *see also* MIAX Options Exchange Rule 518(b)(8).

rule change filed by the Exchange's affiliate, MIAX Options, <sup>100</sup> the Exchange does not believe that its proposal will impose any burden on inter-market competition as it would offer its Members similar functionality to that of the Exchange's affiliate.

The Exchange does not believe that the proposed rule change to adopt a Complex Attributable Order will impose any burden on intra-market competition as use of a Complex Attributable Order will be voluntary and all Members of the Exchange will have the option to use a Complex Attributable Order when submitting a complex order to the Exchange.

##### (iii) Complex PRIME Through MPC

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange believes that the proposal to exclude cPRIME Orders from the Exchange's MPC price protection promotes inter-market competition by enabling the Exchange to better compete for this type of order flow with at least one other exchange that offers similar price improvement auctions. <sup>101</sup> Moreover, since the proposed rule change is identical to a rule change filed by the Exchange's affiliate, MIAX Options, <sup>102</sup> the Exchange does not believe that its proposal will impose any burden on inter-market competition as it would offer its Members similar functionality to that of the Exchange's affiliate.

The Exchange does not believe that its proposal will impose any burden on intra-market competition as all Members of the Exchange that submit cPRIME Orders will benefit equally from the Exchange's proposal. The proposed rule change is intended to promote competition and is designed to benefit all Exchange participants by ensuring that unnecessary price protections which would preclude executions on the Exchange are removed, thus enabling Exchange participants to execute more complex orders on the Exchange.

For all the reasons stated, 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, and believes the proposed changes will in fact enhance competition.

<sup>100</sup> *See supra* note 24.

<sup>101</sup> *See* Cboe Exchange Rule 5.38

<sup>102</sup> *See supra* note 33.

<sup>95</sup> *See* Exchange Rule 515A(a)(2)(iii)(J).

<sup>96</sup> *See supra* note 55.

<sup>97</sup> *See* Nasdaq ISE Exchange Rule, Options 3, Section 14(b)(14) which provides that, "[a]n Exposure Only Complex Order is an order that will be exposed upon entry . . . if eligible, or cancelled if not eligible" and "[a]ny unexecuted balance of an Exposure Only Complex Order remaining upon the completion of the exposure process will be

## (iv) Complex Last To Fill

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange does not believe that its proposal will impose any burden on inter-market competition because the Exchange believes that the proposal to offer a last in priority allocation option to Initiating Members that submit cPRIME Agency Orders allows the Exchange to compete with at least one other options exchange that offers identical functionality.<sup>103</sup> Moreover, since the proposed rule change is identical to a rule change filed by the Exchange's affiliate, MIAX Options,<sup>104</sup> the Exchange does not believe that its proposal will impose any burden on inter-market competition as it would offer its Members similar functionality to that of the Exchange's affiliate, and allow MIAX Emerald to compete with other exchanges that provide this allocation option to exchange participants.

The Exchange does not believe that its proposal will impose any burden on intra-market competition as all Members of the Exchange that submit cPRIME Orders will be able to elect last priority in allocation. Offering Initiating Members that submit cPRIME Agency Orders an additional allocation choice gives Members more flexibility and control over their orders and may result in the submission of more cPRIME Orders which would benefit competition on the Exchange.

For all the reasons stated, 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, and believes the proposed changes will in fact enhance competition.

## (v) ISO PRIME

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed rule

change will benefit inter-market competition as it will allow the Exchange to compete with other markets that already allow an ISO Order type in their price improvement mechanisms.<sup>105</sup>

The Exchange's proposal to adopt an ISO PRIME order type benefits intra-market competition because it will enable the Exchange to provide market participants with an additional method of seeking price improvement through the PRIME. The Exchange does not believe that the proposed rule change will impose any burden on intra-market competition as the Rules of the Exchange apply equally to all Exchange Members, and all Exchange Members may submit an ISO PRIME order.

The Exchange does not believe its proposal to amend Exchange Rule 515A(a)(2)(iii)(C) to adopt a new allocation hierarchy to further apportion Market Maker allocation at the conclusion of an Auction of an ISO PRIME order will impose any burden on intra-market competition but rather promotes intra-market competition as it provides a further incentive to Market Makers to provide their most aggressive quotes to the market throughout the entire trading session and may increase liquidity available during a PRIME Auction. The proposal provides Market Makers with priority quotes on the Book, that participate in an associated ISO sweep, with priority over other Market Makers, which benefits intra-market competition as it also provides an incentive to Market Makers to provide their most aggressive quotes to the market during the entire trading session to be in position to participate in any potential ISO sweeps.

The Exchange's proposal does not change existing order allocation under Exchange Rule 515A(2)(iii) and the Exchange does not believe its proposal will impose any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act, but rather will promote inter-market competition as it provides an additional incentive to Market Makers on the Exchange to provide their most aggressive quotes to the market at all times, which could result in tighter quotes and greater liquidity being available in the market place, which would benefit all investors. Moreover, since the proposed rule change is identical to a rule change filed by the Exchange's affiliate, MIAX Options,<sup>106</sup> the Exchange does not believe that its proposal will impose any burden on inter-market competition as it

would offer its Members similar functionality to that of the Exchange's affiliate.

The Exchange believes its proposal to amend Exchange Rule 515A(a)(2)(iii)(f) promotes just and equitable principles of trade and removes impediments to and perfects the mechanism of a free and open market and a national market system because the proposed rule change provides additional detail and further clarifies the rule. The Exchange does not believe its proposal is a burden on inter-market competition as the change is not competitive in nature and only clarifies the operation of the rule. Additionally, the Exchange does not believe its proposal is a burden on intra-market competition as the Exchange's rules apply equally to all Members, and any Member may submit an ISO Prime order to the Exchange. Further, the Exchange believes the proposed change adds additional detail to the Exchange's rules, and it is in the public interest for rules to be clear and concise so as to eliminate the potential for confusion.

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

Written comments were neither solicited nor received.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>107</sup> and Rule 19b-4(f)(6) thereunder.<sup>108</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

<sup>103</sup> See Cboe Exchange Rule 5.38(e)(5) (stating that if the Initiating Trading Permit Holder selects a single-price submission, it may elect for the Initiating Order to have last priority to trade against the Agency Order and then notwithstanding the Price Improvement provisions as laid out in subparagraphs (e)(1) and (2), the System only executes the Initiating Order against any remaining Agency Order contracts at the stop price after the Agency Order is allocated to all other contra-side interest at all prices equal to or better than the stop price).

<sup>104</sup> See *supra* note 52.

<sup>105</sup> See *supra* note 93.

<sup>106</sup> See *supra* note 52.

<sup>107</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>108</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.

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](mailto:rule-comments@sec.gov). Please include File Number SR-EMERALD-2022-25 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-EMERALD-2022-25. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-EMERALD-2022-25, and should be submitted on or before August 18, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>109</sup>

**J. Matthew DeLesDernier,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-95354; File No. SR-NYSE-2022-32]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change to Amend Rule 7.35B Relating to the Closing Auction and Make Certain Conforming and Non-Substantive Changes to Rule 7.31, Rule 7.35, Rule 7.35B and Rule 104

July 22, 2022.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 ("Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on July 13, 2022, New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to (1) amend Rule 7.35B (DMM-Facilitated Closing Auctions) relating to the Closing Auction, and (2) make certain conforming and non-substantive changes to Rule 7.31 (Orders and Modifiers), Rule 7.35, Rule 7.35B and Rule 104 (Dealings and Responsibilities of DMMs). The proposed rule change is available on the Exchange's website at [www.nyse.com](http://www.nyse.com), 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 self-regulatory organization 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 those 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 parts of such statements.

#### A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Exchange proposes to (1) amend Rule 7.35B (DMM-Facilitated Closing Auctions) relating to the Closing Auction,<sup>4</sup> and (2) make certain conforming and non-substantive changes to Rule 7.31 (Orders and Modifiers), Rule 7.35, Rule 7.35B and Rule 104 (Dealings and Responsibilities of DMMs).

##### *Overview of Current Closing Auction Process*

The following current rules describe the Closing Auction process on the Exchange:

- Rule 7.31 (identifying the order types eligible to participate in an Auction);
- Rule 7.35 (general rules and definitions applicable to Auctions);
- Rule 7.35B (describing the process for DMM-facilitated Closing Auctions);
- Rule 7.35C (describing the process for Exchange-facilitated Auctions); and
- Rule 104 (establishing DMM obligations with respect to Closing Auctions and trading leading into the Closing Auction).

The following interest is eligible to participate in a Closing Auction:

- unexecuted buy and sell orders resting on the Exchange Book at the end of Core Trading Hours (including DMM Orders);<sup>5</sup>
- Auction-Only Orders;<sup>6</sup> and

<sup>4</sup> Capitalized terms used in connection with Auctions on the Exchange are defined in Rule 7.35(a).

<sup>5</sup> Rule 7.35(a)(9) defines "DMM Interest" for purposes of Auctions to mean all buy and sell interest entered by a DMM unit in its assigned securities and includes the following: (i) "DMM Auction Liquidity," which is non-displayed buy and sell interest that is designated for an Auction only (see Rule 7.35(a)(9)(A)); (ii) "DMM Orders," which are orders, as defined under Rule 7.31, entered by a DMM unit (see Rule 7.35(a)(9)(B)); and (iii) "DMM After-Auction Orders," which are orders entered by a DMM unit before either the Core Open Auction or Trading Halt Auction that do not participate in an Auction and are intended instead to maintain price continuity with reasonable depth following an Auction (see Rule 7.35(a)(9)(C)).

<sup>6</sup> Auction-Only Orders available for the Closing Auction are defined in Rule 7.31(c)(2)(A)-(D) as the Limit-on-Close Order ("LOC Order"), Market-on-Close Order ("MOC Order"), Closing D Order, and Closing Imbalance Offset Order ("Closing IO Order").

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>109</sup> 17 CFR 200.30-3(a)(12).