proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email *to rule-comments@sec.gov.* Please include File Number SR–MIAX–2022–47 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–MIAX–2022–47. 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–MIAX–2022–47 and should be submitted on or before January 25, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[39]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–28545 Filed 1–3–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 96587; File No. SR–ISE–2022–29]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend ISE Options 7, Section 4

December 28, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 13, 2022, Nasdaq ISE, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend ISE's Pricing Schedule at Options 7, Section 4.[3]

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/ise/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

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

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

1. Purpose

The Exchange proposes to amend ISE's Pricing Schedule at Options 7, Section 4, Complex Order Fees and Rebates. The Exchange proposes to: (1) increase Complex Order Priority Customer[4] Rebates for Select Symbols[5] and Non-Select Symbols;[6] (2) increase Complex Order Taker Fees for Non-Select Symbols; and (3) amend notes 3 and 8 of Options 7, Section 4 related to Complex Orders. Each change will be described below.

Complex Order Priority Customer Rebates

The Exchange proposes to amend Tiers 6 through 10 of the Complex Order Priority Customer Rebates for Select Symbols and Non-Select Symbols. The Exchange currently offers Members Complex Order Priority Customer Rebates based on a percentage of Total Affiliated Member or Affiliated Entity Complex Order Volume (excluding Crossing Orders[7] and Responses to Crossing Orders[8]) Calculated as a Percentage of Customer Total Consolidated Volume. The Exchange

[39] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange originally filed SR–ISE–2022–27 on December 1, 2022. On December 13, 2022, the Exchange withdrew SR–ISE–2022–27 and submitted this rule change.

[4] A ''Priority Customer'' is a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s), as defined in ISE Options 1, Section 1(a)(37). Unless otherwise noted, the term ''Priority Customer'' includes ''Retail.'' *See* Options 7, Section 1(c).

[5] ''Select Symbols'' are options overlying all symbols listed on the Nasdaq ISE that are in the Penny Interval Program. *See* Options 7, Section 1(c).

[6] ''Non-Select Symbols'' are options overlying all symbols excluding Select Symbols. *See* Options 7, Section 1(c).

[7] A ''Crossing Order'' is an order executed in the Exchange's Facilitation Mechanism, Solicited Order Mechanism, Price Improvement Mechanism (PIM) or submitted as a Qualified Contingent Cross order. For purposes of this Pricing Schedule, orders executed in the Block Order Mechanism are also considered Crossing Orders. *See* Options 7, Section 1(c).

[8] ''Responses to Crossing Order'' is any contra-side interest submitted after the commencement of an auction in the Exchange's Facilitation Mechanism, Solicited Order Mechanism, Block Order Mechanism or PIM. *See* Options 7, Section 1(c).

offers ten tiers of Complex Order rebates. Currently, the Priority Customer Rebates for Select Symbols and Non-Select Symbols for Complex Orders are as follows:

PRIORITY CUSTOMER REBATES

Priority customer complex tier	Total affiliated member or affiliated entity complex order volume (excluding crossing orders and responses to crossing orders) calculated as a percentage of customer total consolidated volume	Rebate for select symbols	Rebate for non-select symbols
Tier 1	0.000%–0.200%	($0.25)	($0.40)
Tier 2	Above 0.200%–0.400%	(0.30)	(0.55)
Tier 3	Above 0.400%–0.450%	(0.35)	(0.70)
Tier 4	Above 0.450%–0.750%	(0.40)	(0.75)
Tier 5	Above 0.750%–1.000%	(0.45)	(0.80)
Tier 6	Above 1.000%–1.350%	(0.47)	(0.80)
Tier 7	Above 1.350%–1.750%	(0.48)	(0.80)
Tier 8	Above 1.750%–2.750%	(0.52)	(0.85)
Tier 9	Above 2.750%–4.500%	(0.52)	(0.86)
Tier 10	Above 4.500%	(0.53)	(0.88)

The Exchange proposes to amend Complex Order Priority Customer Rebate Tiers 6 through Tier 10 for both Select Symbols and Non-Select Symbols. With this proposal, the Exchange would increase the Complex Order Priority Customer Rebates for Select Symbols as follows: Tier 6 would increase from $0.47 to $0.48 per contract, Tier 7 would increase from $0.48 to $0.51 per contract, Tier 8 would increase from $0.52 to $0.55 per contract, Tier 9 would increase from $0.52 to $0.56 per contract, and Tier 10 would increase from $0.53 to $0.57 per contract. Also, the Exchange would increase the Complex Order Priority Customer Rebates for Non-Select Symbols as follows: Tier 6 would increase from $0.80 to $0.85 per contract, Tier 7 would increase from $0.80 to $0.92 per contract, Tier 8 would increase from $0.85 to $1.03 per contract, Tier 9 would increase from $0.86 to $1.04 per contract, and Tier 10 would increase from $0.88 to $1.05 per contract. The Exchange believes that these increased Complex Order Priority Customer Rebates will attract more Complex Order flow to ISE.

Complex Order Maker and Taker Fees

Today, the Exchange assesses the following Complex Order Maker and Taker Fees:

MAKER AND TAKER FEES

Market participant	Maker fee for select symbols	Maker fee for non-select symbols	Maker fee for select symbols when trading against priority customer	Maker fee for non-select symbols when trading against priority customer	Taker fee for select symbols	Taker fee for non-select symbols
Market Maker	$0.10	$0.20	$0.50	$0.86	$0.50	$0.86
Non-Nasdaq ISE Market Maker (FarMM)	0.20	0.20	0.50	0.88	0.50	0.88
Firm Proprietary/Broker-Dealer	0.10	0.20	0.50	0.88	0.50	0.88
Professional Customer	0.10	0.20	0.50	0.88	0.50	0.88
Priority Customer	0.00	0.00	0.00	0.00	0.00	0.00

The Exchange proposes to increase the Complex Order Taker Fees for Non-Select Symbols. Specifically, the Exchange proposes to increase the Complex Order Taker Fees for Non-Select Symbols as follows: Market Maker [9] from $0.86 to $0.98 per contract, Non-Nasdaq ISE Market Maker (FarMM) [10] from $0.88 to $0.98 per contract, Firm Proprietary [11]/Broker-Dealer [12] from $0.88 to $0.98 per contract, and Professional Customer [13] from $0.88 to $0.98 per contract. Priority Customers would continue to be assessed no Complex Order Taker Fees for Non-Select Symbols. The Exchange's proposal would increase Complex Order Taker Fees in Non-Select Symbols for Non-Priority Customers [14] to afford Complex Order Priority Customers greater rebates.

The Exchange also proposes to amend notes 3 and 8 within Options 7, Section 4 related to Complex Orders. Currently, note 3 applies to a Market Maker's Maker Fee for Select Symbols when trading against a Priority Customer in Complex Orders and to a Market Maker's Taker Fee for Select Symbols in Complex Orders. Current note 3 provides, ''This fee is $0.49 per contract for Market Makers that achieve Priority Customer Complex Tier 8, $0.47 per

[9] The term ''Market Makers'' refers to ''Competitive Market Makers'' and ''Primary Market Makers'' collectively. *See* Options 1, Section 1(a)(21).

[10] A ''Non-Nasdaq ISE Market Maker'' is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934, as amended, registered in the same options class on another options exchange. *See* ISE Options 7, Section 1(c).

[11] A ''Firm Proprietary'' order is an order submitted by a member for its own proprietary account. *See* ISE Options 7, Section 1(c).

[12] A ''Broker-Dealer'' order is an order submitted by a member for a broker-dealer account that is not its own proprietary account. *See* ISE Options 7, Section 1(c).

[13] A ''Professional Customer'' is a person or entity that is not a broker/dealer and is not a Priority Customer. *See* ISE Options 7, Section 1(c).

[14] ''Non-Priority Customers'' include Market Makers, Non-Nasdaq ISE Market Makers (FarMMs), Firm Proprietary/Broker-Dealers, and Professional Customers. *See* ISE Options 7, Section 1(c).

contract for Market Makers that achieve Priority Customer Complex Tier 9, and $0.44 per contract for Market Makers that achieve Priority Customer Complex Tier 10.''

The Exchange proposes to eliminate the current note 3 and no longer offer lower Complex Order Maker Fees for Select Symbols when trading against Priority Customer or Complex Order Taker Fees in Select Symbols to Members who achieve Priority Customer Complex Order Rebate Tiers 8, 9 or 10. Instead, the Exchange proposes to offer Members an opportunity to lower the Non-Priority Customer Complex Order Taker Fees in Select Symbols from $0.50 to $0.38 per contract on orders that execute against Priority Customer Complex Orders entered by an Affiliated Member [15] or Affiliated Entity.[16] Today, Affiliated Members and Affiliated Entities may aggregate certain volume for purposes of receiving increased rebates or discounted fees including Complex Order Priority Customer Rebates. The Exchange's proposal would offer Members an opportunity to lower their Complex Order Taker Fee in Select Symbols provided the order that executes against Priority Customer Complex Orders in Select Symbols was entered by an Affiliated Member or Affiliated Entity. Note 3 would incentivize Members to execute orders on ISE in an effort to pay lower Non-Priority Customer Complex Order Taker Fees in Select Symbols. Additionally, note 3 would exclude Complex Orders executed in the Facilitation Mechanism,[17] the Solicited Order Mechanism [18] and the Price Improvement Mechanism [19] where these auction mechanisms have separate pricing. As proposed, note 3 would provide, ''This Taker Fee is $0.38 per contract when executed against Priority Customer Complex Orders in Select Symbols entered by an Affiliated Member or Affiliated Entity, excluding Complex Orders executed in the Facilitation Mechanism, Solicited Order Mechanism, and Price Improvement Mechanism.''

The Exchange believes that the proposed note 3 reduced Non-Priority Customer Complex Order Taker Fees for Select Symbols will attract order flow to ISE. As proposed, Priority Customers are eligible for increased Complex Order Rebates and continue to pay no Complex Order Taker Fees. The Exchange believes that the increased Complex Order Priority Customer Rebates and $0.00 per contract Complex Order Priority Customer Taker Fee taken together with the opportunity for lower Non-Priority Customer Complex Order Taker Fees for Select Symbols will continue to encourage an active and liquid market in Complex Order Select Symbols on ISE.

The Exchange proposes to amend note 8 within Options 7, Section 4 related to Complex Orders. Currently, note 8 applies to Complex Order Non-Priority Customer Taker Fees for Non-Select Symbols. Current note 8 provides, ''A $0.05 per contract surcharge will be assessed to non-Priority Customer Complex Orders that take liquidity from the Complex Order Book, excluding Complex Orders executed in the Facilitation Mechanism, Solicited Order Mechanism, Price Improvement Mechanism and ''exposure'' auctions pursuant to Options 3, Section 14(c)(3).'' The Exchange proposes to amend note 8 to increase the surcharge from $0.05 to $0.12 per contract. The surcharge was originally adopted to offset the costs of providing the Complex Order Priority Customer Rebates. With the proposed increased to Complex Order Priority Customer Rebates described herein, the Exchange proposes to increase the surcharge from $0.05 to $0.12 per contract. The Exchange believes that it is appropriate to revisit this surcharge and increase it at this time. Additionally, the Exchange proposes to continue to assess the surcharge to non-Priority Customer Complex Orders that take liquidity from the Complex Order Book, but now proposes to assess the surcharge when those orders are executed against Priority Customer Complex Orders. The proposed change is intended to align more closely the surcharge to the Complex Order Priority Customer Rebates. Finally, the Exchange proposes to continue to exclude Complex Orders entered in the Facilitation Mechanism, Solicited Order Mechanism, and Price Improvement Mechanism, but include Exposure Complex Orders [20] and Exposure Only Complex Orders [21] pursuant to Options 3, Section 14(b)(13) and (14)).[22] The Exchange notes that there is separate pricing for the auction mechanisms, however Exposure Complex Orders and Exposure Only Complex Orders do not have separate pricing and these orders

[15] An ''Affiliated Member'' is a Member that shares at least 75% common ownership with a particular Member as reflected on the Member's Form BD, Schedule A. *See* Options 7, Section 1(c).

[16] An ''Affiliated Entity'' is a relationship between an Appointed Market Maker and an Appointed OFP for purposes of qualifying for certain pricing specified in the Schedule of Fees. Market Makers and OFPs are required to send an email to the Exchange to appoint their counterpart, at least 3 business days prior to the last day of the month to qualify for the next month. The Exchange will acknowledge receipt of the emails and specify the date the Affiliated Entity is eligible for applicable pricing, as specified in the Pricing Schedule. Each Affiliated Entity relationship will commence on the 1st of a month and may not be terminated prior to the end of any month. An Affiliated Entity relationship will automatically renew each month until or unless either party terminates earlier in writing by sending an email to the Exchange at least 3 business days prior to the last day of the month to terminate for the next month. Affiliated Members may not qualify as a counterparty comprising an Affiliated Entity. Each Member may qualify for only one (1) Affiliated Entity relationship at any given time. *See* Options 7, Section 1(c).

[17] The Facilitation Mechanism is a process by which an Electronic Access Member can execute a transaction wherein the Electronic Access Member seeks to facilitate a block-size order it represents as agent, and/or a transaction wherein the Electronic Access Member solicited interest to execute against a block-size order it represents as agent. *See* Options 3, Section 11(b).

[18] The Solicited Order Mechanism is a process by which an Electronic Access Member can attempt to execute orders of 500 or more contracts it represents as agent (the ''Agency Order'') against contra orders that it solicited. Each order entered into the Solicited Order Mechanism shall be designated as all-or-none. *See* Options 3, Section 11(d).

[19] The Price Improvement Mechanism is a process by which an Electronic Access Member can provide price improvement opportunities for a transaction wherein the Electronic Access Member seeks to facilitate an order it represents as agent, and/or a transaction wherein the Electronic Access Member solicited interest to execute against an order it represents as agent (a ''Crossing Transaction''). *See* Options 3, Section 13.

[20] An Exposure Complex Order is an order that will be exposed upon entry as provided in Supplementary Material .01 to this Options 3, Section 12 if eligible, or entered on the Complex Order Book if not eligible. Any unexecuted balance of an Exposure Complex Order remaining upon the completion of the exposure process will be entered on the Complex Order Book. *See* Options 3, Section 14(b)(13).

[21] An Exposure Only Complex Order is an order that will be exposed upon entry as provided in Supplementary Material .01 to this Rule if eligible, or cancelled if not eligible. Any unexecuted balance of an Exposure Only Complex Order remaining upon the completion of the exposure process will be cancelled. *See* Options 3, Section 14(b)(14).

[22] Today, note 8 within Options 7, Section 4 excludes ''exposure'' auctions pursuant to Options 3, Section 14(c)(3). The Exchange notes that Exposure Complex Orders and Exposure Only Complex Orders are the two order types that are utilized by Members to designate an order as eligible for the Complex Order Exposure described within Supplementary Material .01 to Options 3, Section 14. The original rule change cited ''exposure'' auctions pursuant to ISE Rule 722(b)(3)(iii) which rule text was relocated to 722(b) Supplementary Material .01 to Rule 722 and later became Supplementary .01 to Options 3, Section 14. *See* Securities Exchange Act Release Nos. 82644 (February 6, 2018), 83 FR 6069 (February 12, 2018) (SR–ISE–2018–10) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Schedule of Fees To Modify Complex Order Fees and Rebates); 84373 (October 5, 2018), 83 FR 51730 (October 12, 2018) (SR–ISE–2018–56) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Amend Its Rules Relating to Complex Orders); and 86138 (June 18, 2019), 84 FR 29567 (June 24, 2019) (SR–ISE–2019–17) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Relocate ISE's Rules From Their Current Place in the Rulebook Into the New Rulebook Shell).

are exposed upon entry and may not be entered on the Complex Order Book. The Exchange proposes to subject Exposure Complex Orders and Exposure Only Complex Orders to the same pricing as other orders entered into the Complex Order Book. The Proposed note 8 would provide, ''A $0.12 per contract surcharge will be assessed to Non-Priority Customer Complex Orders that take liquidity from the Complex Order Book (including Exposure Complex Orders and Exposure Only Complex Orders pursuant to Options 3, Section 14(b)(13) and (14)) when executed against Priority Customer Complex Orders, excluding Complex Orders executed in the Facilitation Mechanism, Solicited Order Mechanism, and Price Improvement Mechanism.'' With this amendment, the Exchange seeks to fortify Member participation in the Complex Order Priority Customer rebate program and incentivize increased Complex Order volume on the Exchange. Note 8 would continue to apply to Complex Order Non-Priority Customer Taker Fees for Non-Select Symbols and, as proposed, would also apply to Non-Priority Customer Taker Fees for Select Symbols.

Technical Amendment

The Exchange also proposes to amend ''non-Priority Customer'' to ''Non-Priority Customer'' within notes 1 and 8 of Options 7, Section 4. This term is defined within Options 7, Section 1(c).

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[23] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[24] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Proposal Is Reasonable

The proposed changes to its Pricing Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission*[25] (''NetCoalition''), the D.C. Circuit stated, ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .''[26]

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options transaction services. The Exchange is only one of sixteen options exchanges to which market participants may direct their order flow. Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. Within the foregoing context, the proposal represents a reasonable attempt by the Exchange to attract additional order flow to the Exchange and increase its market share relative to its competitors.

Complex Order Priority Customer Rebates

The Exchange's proposal to increase Complex Order Priority Customer Rebate Tiers 6 through 10 for Select Symbols and Non-Select Symbols is reasonable because the increased Priority Customer Rebates would attract additional Complex Order Priority Customer order flow to ISE in both Select Symbols and Non-Select Symbols. All Members may interact with the Complex Order Priority Customer order flow attracted by these higher rebates. Specifically, the Exchange believes that its proposal, which, among other things, increases rebate amounts where Members can qualify for larger rebates, is reasonable as it will encourage Members to increase the amount of Priority Customer Complex Orders that they send to the Exchange instead of sending this order flow to a competing options exchange. The Exchange believes that with the proposed rebate levels, Members who submit the same amount of order flow as they do today for Complex Order Priority Customer Rebate Tiers 6 through 10 for Select Symbols and Non-Select Symbols would receive larger rebates.

The Exchange's proposal to amend Complex Order Tiers 6 through 10 of the Priority Customer Rebates for Select Symbols and Non-Select Symbols is equitable and not unfairly discriminatory. Today, Complex Order Rebates are only offered to Priority Customer Complex Orders. Priority Customer liquidity is the most sought after liquidity. Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. Paying Complex Order Priority Customer Rebates is consistent with the treatment of Priority Customers on MIAX Emerald, LLC.[27]

Maker and Taker Fees

The Exchange's proposal to increase the Complex Order Taker Fees for Non-Select Symbols is reasonable because the proposal would permit ISE to offer higher Complex Order Priority Customer Rebates to attract additional Priority Customer order flow to ISE in both Select Symbols and Non-Select Symbols. All Members may interact with the Complex Order Priority Customer order flow attracted by these higher rebates. While the Exchange is increasing the Complex Order Taker Fees for Non-Select Symbols, the Exchange believes that market participants will continue to be incentivized to send Complex Order Priority Customer order flow to ISE to obtain the Priority Customer Complex Order Rebates offered by the Exchange. Additionally, the increased Complex Order Taker Fees remain competitive with BOX Exchange LLC (''BOX'').[28] Overall, combined with the proposed larger Priority Customer Complex Order rebates, the Exchange believes that the proposed change will generally allow the Exchange and its Members to better compete for Complex Order flow by increasing Priority Customer liquidity thus enhancing competition.

The Exchange's proposal to increase the Complex Order Taker Fees for Non-Select Symbols is equitable and not unfairly discriminatory. The Exchange

[23] 15 U.S.C. 78f(b).

[24] 15 U.S.C. 78f(b)(4) and (5).

[25] *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010).

[26] *Id.* at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[27] *See* MIAX Emerald's Fee Schedule. MIAX Emerald pays complex orders from Priority Customers the highest rebates.

[28] *See* BOX complex orders fees for non-public customers which range from $0.98 to $1.00 per contract.

would uniformly assess a $0.98 per contract Complex Order Taker Fee for Non-Select Symbols to all Non-Priority Customers. Priority Customers would continue to be assessed no Complex Order Taker Fee for Non-Select Symbols. Priority Customer liquidity is the most sought after liquidity. Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

The Exchange's proposal to amend note 3 within Options 7, Section 4 with respect to Complex Order Taker Fees for Select Symbols is reasonable because the Exchange would assess a lower Non-Priority Customer Complex Order Taker Fee ($0.38 vs. $0.50 per contract) in Select Symbols when an order that was entered by an Affiliated Member or Affiliated Entity executes against Priority Customer Complex Orders in Select Symbols. While the proposal would eliminate the current note 3, thereby no longer offering lower Complex Order Maker Fees for Select Symbols when trading against Priority Customers and Taker Fees for Select Symbols to Members who achieve Priority Customer Complex Order Rebate Tiers 8, 9 or 10, the Exchange would offer Members an opportunity to lower Non-Priority Customer Complex Orders Taker Fees in Select Symbols from $0.50 to $0.38 per contract when an order that executed against Priority Customer Complex Orders is entered by an Affiliated Member or Affiliated Entity. Today, Affiliated Members and Affiliated Entities may aggregate certain volume for purposes of receiving increased rebates or discounted fees.[29] The Exchange's proposal is reasonable because it would offer Members the opportunity to lower their Non-Priority Customer Complex Order Taker Fee in Select Symbols, provided they execute against Priority Customer Complex Orders in Select Symbols that was entered by an Affiliated Member or Affiliated Entity. The proposal to exclude Complex Orders executed in the Exchange's various auction mechanisms from the proposed Non-Priority Customer Complex Order surcharge is reasonable because those auction mechanisms are subject to separate pricing. Proposed note 3 would incentivize Members to execute orders on ISE in an effort to pay a lower Non-Priority Customer Complex Order Taker Fee in Select Symbols. The Exchange believes that the proposed note 3 reduced Complex Order Non-Priority Customer Taker Fee for Select Symbols will attract order flow to ISE. As proposed, Priority Customers are eligible for increased Complex Order Rebates and continue to pay no Complex Order Taker Fees. The Exchange believes that the higher Complex Order Priority Customer Rebates and the $0.00 per contract Complex Order Priority Customer Taker Fee taken together with the opportunity for a lower Complex Order Non-Priority Customer Taker Fee for Select Symbols, will continue to encourage an active and liquid market in Non-Select Symbols on ISE. Also, the Exchange proposes to continue to incentivize certain Members, who are not Affiliated Members or Affiliated Entities, to enter into such a relationship for the purpose of aggregating volume executed on the Exchange to qualify to reduce their Complex Order Non-Priority Customer Taker Fee in Select Symbols.

The Exchange's proposal to amend note 3 within Options 7, Section 4 with respect to Complex Order Taker Fees for Select Symbols is equitable and not unfairly discriminatory because all Non-Priority Customers would be assessed a lower Complex Order Taker Fee in Select Symbols when executing against Priority Customer Complex Orders in Select Symbols entered by an Affiliated Member or Affiliated Entity. Priority Customers pay no Complex Order Taker Fees in Select Symbols and, therefore, are not offered the lower fee. Additionally, offering Members the opportunity to lower their Non-Priority Customer Complex Order Taker Fee in Select Symbols provided they execute against Priority Customer Complex Orders in Select Symbols that was entered by an Affiliated Member or Affiliated Entity is equitable and not unfairly discriminatory as it relates to Members who are not Affiliated Members or Affiliated Entities because any Member may enter into such a relationship for the purpose of aggregating volume executed on the Exchange to qualify to reduce their Complex Order Non-Priority Customer Taker Fee in Select Symbols. Finally, the criteria for assessing the lower Non-Priority Customer Complex Orders Taker Fee would be uniformly applied all Members.

The Exchange's proposal to amend note 8 within Options 7, Section 4 related to Complex Orders to increase the surcharge from $0.05 to $0.12 per contract is reasonable because the Exchange is also increasing the Complex Order Priority Customer Rebates. The surcharge was originally adopted to offset the costs of providing the Complex Order Priority Customer Rebates.[30] Assessing this surcharge to only those orders that take liquidity from the market is reasonable because the Exchange wants to continue to encourage market participation for those participants that seek to add liquidity on ISE. Additionally, the Exchange's proposal to assess the surcharge to Non-Priority Customer Complex Orders that take liquidity from the Complex Order Book when those orders are executed against Priority Customer Complex Orders is reasonable because it will more closely align the surcharge to the Complex Order Priority Customer Rebates.

Continuing to exclude Complex Orders executed in the Facilitation Mechanism, Solicited Order Mechanism, and Price Improvement Mechanism from the proposed Non-Priority Customer Complex Order surcharge is reasonable because those auction mechanisms are subject to separate pricing. The Exchange desires to continue to encourage participation within those auction mechanisms. Subjecting Exposure Complex Orders and Exposure Only Complex Orders pursuant to Options 3, Section 14(b)(13) and (14) to the note 8 surcharge is reasonable because there is no separate pricing for these order types that are entered into Complex Exposure within Supplementary .01 to Options 3, Section 14. These order types are exposed upon entry and may not be entered on the Complex Order Book. The Exchange believes it is reasonable to subject Exposure Complex Orders and Exposure Only Complex Orders to the same pricing as other orders entered into the Complex Order Book which would include the Non-Priority Customer Complex Order surcharge. With this amendment, the Exchange seeks to fortify Member participation in the Complex Order Priority Customer rebate program and incentivize increased Complex Order volume on the Exchange. Finally, applying note 8 to Taker Fees for Select Symbols as well as Non-Select Symbols is reasonable because the Exchange offers Complex Order Priority Customer Rebates for both Select Symbols and Non-Select Symbols. The surcharge is designed to offset the costs of providing the

[29] Affiliated Members may not qualify as a counterparty comprising an Affiliated Entity. *See* Options 7, Section 1(c).

[30] *See* Securities Exchange Act Release No. 82644 (February 6, 2018), 83 FR 6069 (February 12, 2018) (SR–ISE–2018–10) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Schedule of Fees To Modify Complex Order Fees and Rebates).

Complex Order Priority Customer Rebates.

The Exchange's proposal to amend note 8 within Options 7, Section 4 related to Complex Orders to increase the surcharge from $0.05 to $0.12 per contract is equitable and not unfairly discriminatory because the surcharge would be uniformly applied to all Members who transact Non-Priority Customer Complex Orders that take liquidity from the Complex Order Book, including Exposure Complex Orders and Exposure Only Complex Orders, when executed against Priority Customer Complex Orders, excluding Complex Orders executed in the Facilitation Mechanism, Solicited Order Mechanism, and Price Improvement Mechanism. Additionally, the criteria for assessing the surcharge would be uniformly applied to all Members for Taker Fees in both Select and Non-Select Symbols. Continuing to exclude Complex Orders executed in the Facilitation Mechanism, Solicited Order Mechanism, and Price Improvement Mechanism from the proposed Non-Priority Customer Complex Order surcharge is equitable and not unfairly discriminatory because those auction mechanisms are subject to separate pricing. The Exchange desires to continue to encourage participation within those auction mechanisms. Subjecting Exposure Complex Orders and Exposure Only Complex Orders pursuant to Options 3, Section 14(b)(13) and (14) to the note 8 surcharge is equitable and not unfairly discriminatory because there is no separate pricing for these order types that are entered into Complex Exposure within Supplementary .01 to Options 3, Section 14. These order types are exposed upon entry and may not be entered on the Complex Order Book. The Exchange believes it is equitable and not unfairly discriminatory to subject Exposure Complex Orders and Exposure Only Complex Orders to the same pricing as other orders entered into the Complex Order Book which would include the Non-Priority Customer Complex Order surcharge. Any Member may utilize the Facilitation Mechanism, the Solicited Order Mechanism, and the Price Improvement Mechanism [31] as well as Exposure Complex Orders and Exposure Only Complex Orders.

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

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

Intermarket Competition

The Exchange operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which pricing changes in this market may impose any burden on competition is extremely limited because other options exchanges offer similar rebate programs as well as maker/taker pricing.[32]

Moreover, as noted above, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and rebate changes. In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of Members or competing order execution venues to maintain their competitive standing in the financial markets.

Intramarket Competition

The Exchange's proposal to amend Complex Order Tiers 6 through 10 of the Priority Customer Rebates for Select Symbols and Non-Select does not impose an undue burden on competition. Today, Complex Order Rebates are only offered to Priority Customer Complex Orders. Priority Customer liquidity is the most sought after liquidity. Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. Paying Complex Order Priority Customer Rebates is consistent with the treatment of Priority Customers on MIAX Emerald, LLC where orders from Priority Customers are also paid the highest rebates.[33]

The Exchange's proposal to increase the Complex Order Taker Fees for Non-Select Symbols does not impose an undue burden on competition because all Non-Priority Customers would uniformly be assessed a $0.98 per contract Complex Order Taker Fee for Non-Select Symbols. Priority Customers would continue to be assessed no Complex Order Taker Fee for Non-Select Symbols. Priority Customer liquidity is the most sought after liquidity. Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

The Exchange's proposal to amend note 3 within Options 7, Section 4 with respect to Complex Order Taker Fees for Select Symbols does not impose an undue burden on competition because all Non-Priority Customers would be assessed a lower Complex Order Taker Fee in Select Symbols when executing against Priority Customer Complex Orders in Select Symbols entered by an Affiliated Member or Affiliated Entity. Priority Customers pay no Complex Order Taker Fees in Select Symbols and, therefore, are not offered the lower fee. Additionally, offering Members the opportunity to lower their Non-Priority Customer Complex Order Taker Fee in Select Symbols provided they execute against Priority Customer Complex Orders in Select Symbols that was entered by an Affiliated Member or Affiliated Entity does not impose an undue burden on competition as it relates to Members who are not Affiliated Members or Affiliated Entities because any Member may enter into such a relationship for the purpose of aggregating volume executed on the Exchange to qualify to reduce their Complex Order Non-Priority Customer Taker Fee in Select Symbols. Finally, the criteria for assessing the lower Non-Priority Customer Complex Orders Taker Fee would be uniformly applied all Members.

The Exchange's proposal to amend note 8 within Options 7, Section 4 related to Complex Orders to increase the surcharge from $0.05 to $0.12 per contract does not impose an undue burden on competition because the surcharge would be uniformly applied

[31] The Exchange notes that with respect to the Price Improvement Mechanism, an Initiating Order may not be a solicited order for the account of any Exchange Lead Market Maker, SQT, RSQT or non-streaming Market Maker assigned in the affected series. *See* Options 3, Section 13(a)(8).

[32] *See* MIAX Emerald's Fee Schedule.

[33] *See* MIAX Emerald's Fee Schedule.

to all Members who transact Non-Priority Customer Complex Orders that take liquidity from the Complex Order Book, including Exposure Complex Orders and Exposure Only Complex Orders, when executed against Priority Customer Complex Orders, excluding Complex Orders executed in the Facilitation Mechanism, Solicited Order Mechanism, and Price Improvement Mechanism. Additionally, the criteria for assessing the surcharge would be uniformly applied to all Members for Taker Fees in both Select and Non-Select Symbols. Continuing to exclude Complex Orders executed in the Facilitation Mechanism, Solicited Order Mechanism, and Price Improvement Mechanism from the proposed Non-Priority Customer Complex Order surcharge is equitable and not unfairly discriminatory because those auction mechanisms are subject to separate pricing. The Exchange desires to continue to encourage participation within those auction mechanisms. Subjecting Exposure Complex Orders and Exposure Only Complex Orders pursuant to Options 3, Section 14(b)(13) and (14) to the note 8 surcharge is equitable and not unfairly discriminatory because there is no separate pricing for these order types that are entered into Complex Exposure within Supplementary .01 to Options 3, Section 14. These order types are exposed upon entry and may not be entered on the Complex Order Book. The Exchange believes it is equitable and not unfairly discriminatory to subject Exposure Complex Orders and Exposure Only Complex Orders to the same pricing as other orders entered into the Complex Order Book which would include the Non-Priority Customer Complex Order surcharge. Any Member may utilize the Facilitation Mechanism, the Solicited Order Mechanism, and the Price Improvement Mechanism [34] as well as Exposure Complex Orders and Exposure Only Complex Orders.

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

No written comments were either solicited or received.

[34] The Exchange notes that with respect to the Price Improvement Mechanism, an Initiating Order may not be a solicited order for the account of any Exchange Lead Market Maker, SQT, RSQT or non-streaming Market Maker assigned in the affected series. *See* Options 3, Section 13(a)(8).

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [35] and Rule 19b–4(f)(2) [36] thereunder. 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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ISE–2022–29 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–ISE–2022–29. 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–ISE–2022–29 and should be submitted on or before January 25, 2023.

[35] 15 U.S.C. 78s(b)(3)(A)(ii).

[36] 17 CFR 240.19b–4(f)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[37]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–28544 Filed 1–3–23; 8:45 am]

BILLING CODE 8011–01–P

[37] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34793; File No. 812–15420]

VanEck Russia ETF and VanEck Russia Small-Cap ETF, Series of VanEck ETF Trust, and Van Eck Associates Corporation; Notice of Application and Temporary Order

December 28, 2022.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application and a temporary order under section 22(e)(3) of the Investment Company Act of 1940 (the "Act").

SUMMARY OF APPLICATION: Applicants request a temporary order to permit each of VanEck Russia ETF and VanEck Russia Small-Cap ETF (each, a "Fund," and collectively, the "Funds"), series of VanEck ETF Trust (the "Trust"), to suspend the right of redemption of its outstanding redeemable securities and postpone the date of payment of redemption proceeds with respect to redemption orders received but not yet paid.

APPLICANTS: The Trust, on behalf of the Funds, and Van Eck Associates Corporation, the Funds' investment adviser ("Adviser" and together with the Trust, the "Applicants").

FILING DATE: The application was filed on December 28, 2022.

HEARING OR NOTIFICATION OF HEARING: Interested persons may request a