

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰⁷

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-96378; File No. SR-EMERALD-2022-31]

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

November 22, 2022.

Pursuant to the provisions of 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 November 10, 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, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend Exchange Rule 518, Complex 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 Exchange Rule 518, Complex Orders, to adopt a new optional order instruction, “Do Not Leg (‘DNL’),” to paragraph (b), Types of Complex Orders.

The Exchange currently offers its Members ³ a number of complex order types enumerated in paragraph (b) of Rule 518. The Exchange offers a Complex Auction-on-Arrival Order,⁴ a Complex Auction-or-Cancel Order,⁵ a Complex Immediate-or-Cancel Order,⁶ a Complex Customer Cross Order,⁷ a Complex Qualified Contingent Cross Order,⁸ a Complex PRIME Order,⁹ a Complex Attributable Order,¹⁰ and a Complex Auction-on-Arrival-Only Order.¹¹

The Exchange now proposes to adopt a new optional order instruction for complex orders entitled, “Do Not Leg” or “DNL.” A complex order that is marked with the DNL instruction will not leg into the Simple Order Book.¹² Additionally, a complex order that is marked with the DNL instruction must be executed at a price that complies with Exchange Rule 518(c)(2)(ii). The DNL order instruction will be available for use with all complex order types (excluding Complex Customer Cross Orders, Complex Qualified Contingent Cross Orders, and cPRIME Orders) offered on the Exchange.

Complex Customer Cross Orders ¹³ and Complex Qualified Contingent Cross Orders ¹⁴ are order types that execute immediately upon entry (provided that they satisfy certain criteria) and would therefore not leg into the Simple Order Book. Specifically, Complex Customer Cross (“cC2C”) Orders as defined in Rule 518(b)(5), are automatically executed upon entry provided that the execution is at least \$0.01 better than (inside) the

icEBBO ¹⁵ (as defined in Rule 518(a)(12)) price or the best net price of a complex order (as defined in Rule 518(a)(5)) on the Strategy Book ¹⁶ (as defined in Rule 518(a)(17)), whichever is more aggressive.¹⁷ Complex Qualified Contingent Cross (“cQCC”) Orders, as defined in Rule 518(b)(6), are automatically executed upon entry provided that, with respect to each option leg of the cQCC Order, the execution (i) is not at the same price as a Priority Customer Order ¹⁸ on the Exchange’s Book; ¹⁹ and (ii) is at or between the NBBO.²⁰

Additionally, the DNL instruction will not be available for cPRIME Orders, as cPRIME Orders are another type of a crossing order. Specifically, 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.²¹ Specifically, 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.²² Currently, a cPRIME Auction has a duration of 100 milliseconds.²³

¹⁵ The Implied Complex MIAX Emerald Best Bid or Offer (“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 trading 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).

¹⁶ The “Strategy Book” is the Exchange’s electronic book of complex orders and complex quotes. See Exchange Rule 518(a)(17).

¹⁷ See Exchange Rule 515(h)(3).

¹⁸ 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.

¹⁹ The term “Book” means the electronic book of buy and sell orders and quotes maintained by the System. See Exchange Rule 100.

²⁰ See Exchange Rule 515(h)(4). The term “NBBO” means the national best bid or offer as calculated by the Exchange based on market information received by the Exchange from OPRA. See Exchange Rule 100.

²¹ See Interpretations and Policies .12(a) of Exchange Rule 515A.

²² See Interpretations and Policies .12(a)(i) of Exchange Rule 515A.

²³ See MIAX Emerald Exchange System Settings on the Exchange’s public website, available at https://www.miaxoptions.com/sites/default/files/page-files/MIAX_EMERALD_System_Settings_11122018.pdf.

¹⁰⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 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.

⁴ See Exchange Rule 518(b)(2).

⁵ See Exchange Rule 518(b)(3).

⁶ See Exchange Rule 518(b)(4).

⁷ See Exchange Rule 518(b)(5).

⁸ See Exchange Rule 518(b)(6).

⁹ See Exchange Rule 518(b)(7).

¹⁰ See Exchange Rule 518(b)(8).

¹¹ See Exchange Rule 518(b)(9).

¹² The “Simple Order Book” is the Exchange’s regular electronic book of orders and quotes. See Exchange Rule 518(a)(15).

¹³ See Exchange Rule 518(b)(5).

¹⁴ See Exchange Rule 518(b)(6).

Additionally, the Exchange notes that at least two other option exchanges provide similar functionality.²⁴

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act²⁵ in general, and furthers the objectives of Section 6(b)(5) of the Act²⁶ 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 new order instruction for complex orders 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 investors additional control over the disposition of their complex orders, in connection with their attempt to provide and not remove liquidity, or in connection with applicable fees for executions.

The Exchange believes its proposed rule change 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 allowing investors to have greater control over the execution of their 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 intra-market competition as the DNL order instruction is optional and will be available for all Members on

the Exchange that submit complex orders to the Exchange.

The Exchange does not believe that the proposed rule change will impose any burden on inter-market competition but may enhance inter-market competition. 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.

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 after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act²⁷ and Rule 19b-4(f)(6)²⁸ 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 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-EMERALD-2022-31 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-2022-31. 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 such 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-2022-31 and should be submitted on or before December 20, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁹

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²⁴ See Cboe Exchange Rule 5.33(b), Complex Only, which defines a "Complex Only" order as a Day or IOC complex order a Market-Maker may designate to execute only against complex orders in the COB and not Leg into the Simple Book. The terms "Complex Order Book" and "COB" mean the Cboe Exchange's electronic book of complex orders used for all trading sessions. See Cboe Exchange Rule 5.33(b); see also NYSEArca Options Exchange Rule 6.91P-O(e)(1)(C).

²⁵ 15 U.S.C. 78f(b).

²⁶ 15 U.S.C. 78f(b)(5).

²⁷ 15 U.S.C. 78s(b)(3)(A).

²⁸ 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.

²⁹ 17 CFR 200.30-3(a)(12).