

6. The 2011 strategy focused on engineered nanomaterials and did not include incidental nanoscale materials such as nanoplastics and certain nanoscale particulate emissions such as those from 3D printing. If the updated strategy is revised to include some non-engineered or incidental nanomaterials, describe how to scope the strategy in a way that complements rather than being redundant with existing health and environmental research (e.g., by excluding the large body of existing research on air pollution, which can include nanoscale particles).

Dated: May 18, 2023.

Stacy Murphy,

Deputy Chief Operations Officer/Security Officer.

[FR Doc. 2023-10958 Filed 5-22-23; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97520; File No. SR-MIAX-2023-20]

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

May 17, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 4, 2023, Miami International Securities Exchange LLC (“MIAX” 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 is filing a proposal 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>, at MIAX’s principal office, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 Rule 518, Complex Orders, to: (i) amend the definition of a conforming ratio and a non-conforming ratio to include the conforming and non-conforming ratios for stock-option orders; (ii) amend the definition of a complex order to insert the clarifying phrase, “conforming or non-conforming ratio” for stock-option orders; and (iii) adopt new paragraph (2) to Interpretations and Policies .01(c) of Rule 518 to describe the handling of stock-option orders with non-conforming ratios. Additionally, the Exchange proposes to make a minor non-substantive edit to the first paragraph of Interpretations and Policies .01(c) of Rule 518 to renumber the paragraph as paragraph (1).

Background

Currently, the Exchange defines a “complex order” as any order involving the concurrent purchase and/or sale of two or more different options in the same underlying security (the “legs” or “components” of the complex order), for the same account, in a conforming³ or non-conforming ratio⁴ for the purposes of executing a particular investment strategy. Mini-options may only be part of a complex order that includes other mini-options. Only those complex orders in the classes designated by the Exchange and

³ A “conforming ratio” is where the ratio between the sizes of the components of a complex order comprised solely of options is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00). See Exchange Rule 518(a)(8).

⁴ A “non-conforming ratio” is where the ratio between the sizes of the components of a complex order comprised solely of options is greater than three-to-one (3.00) or less than one-to-three (.333). See Exchange Rule 518(a)(16).

communicated to Members⁵ via Regulatory Circular with no more than the applicable number of legs, as determined by the Exchange on a class-by-class basis and communicated to Members via Regulatory Circular, are eligible for processing.

Additionally, a complex order can also be a “stock-option order” as described further, and subject to the limitations set forth, in Interpretations and Policies .01 of Rule 518. A stock-option order is an order to buy or sell a stated number of units of an underlying security (stock or Exchange Traded Fund Share (“ETF”)) or a security convertible into the underlying stock (“convertible security”) coupled with the purchase or sale of options contract(s) on the opposite side of the market representing either (i) the same number of units of the underlying security or convertible security, or (ii) the number of units of the underlying stock necessary to create a delta neutral position, but in no case in a ratio greater than eight-to-one (8.00), where the ratio represents the total number of units of the underlying security or convertible security in the option leg to the total number of units of the underlying security or convertible security in the stock leg. Only those stock-option orders in the classes designated by the Exchange and communicated to Members via Regulatory Circular with no more than the applicable number of legs as determined by the Exchange on a class-by-class basis and communicated to Members via Regulatory Circular, are eligible for processing.⁶

Proposal

The Exchange now proposes to accept stock-option orders with ratios greater than eight-to-one, or non-conforming ratios, as defined herein. To support its proposal, the Exchange proposes to amend the definition of a “conforming ratio” in Exchange Rule 518(a)(8) to include the current ratio for stock-option orders accepted by the Exchange, which is where one component of the complex order is the underlying security (stock or ETF), or security convertible into the underlying stock (“convertible security”) and the ratio between the option component(s) and the underlying security (stock or ETF), or convertible security is less than or equal to eight-to-one (8.00).

Specifically, as amended the proposed rule will provide that, a

⁵ 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.

⁶ See Exchange Rule 518(a)(5).

“conforming ratio” is where the ratio between the sizes of the components of a complex order comprised solely of options is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00); where one component of the complex order is the underlying security (stock or ETF) or security convertible into the underlying stock (“convertible security”) the ratio between the option component(s) and the underlying security (stock or ETF) or convertible security is less than or equal to eight-to-one (8.00).⁷ The Exchange also proposes to amend the definition of a non-conforming ratio in Exchange Rule 518(a)(16) to include stock-option orders, to state, where one component of the complex order is the underlying security (stock or ETF) or underlying security convertible into the underlying stock (“convertible security”), the ratio between the option component(s) and the underlying security (stock or ETF) or convertible security is greater than eight-to-one (8.00). Specifically, as amended the proposed rule will provide that, a “non-conforming ratio” is where the ratio between the sizes of the components of a complex order comprised solely of options is greater than three-to-one (3.00) or less than one-to-three (.333); where one component of the complex order is the underlying security (stock or ETF) or security convertible into the underlying stock (“convertible security”), the ratio between the option component(s) and the underlying security (stock or ETF) or convertible security is greater than eight-to-one (8.00).⁸

Additionally, the Exchange proposes to amend the second paragraph of Rule 518(a)(5) which discusses stock-option orders to include the terms conforming and non-conforming ratio and to remove the reference to the eight-to-one ratio as the conforming and non-conforming ratios for stock-option complex orders are being relocated under this proposal to Rule 518(a)(8) and (a)(16) respectively.

The Exchange also proposes to renumber the first paragraph of Interpretations and Policies .01(c) of Rule 518 as paragraph (1) and to insert the clarifying phrase, “with a conforming ratio,” to delineate stock-option order handling when there is a conforming ratio versus a non-conforming ratio.

Like stock-option orders with conforming ratios, stock-option orders with non-conforming ratios will also be required to create delta neutral

positions⁹ and must also comply with the Qualified Contingent Trade Exemption from Rule 611(a) of Regulation NMS under the Securities Exchange Act of 1934 in the same manner as stock-option orders with conforming ratios.¹⁰ Members submitting stock option orders in conforming or non-conforming ratios represent that such orders comply with the Qualified Contingent Trade Exemption.¹¹ The Exchange represents that it will have the necessary surveillance in place for stock-option orders with non-conforming ratios prior to implementing this functionality.

The Exchange proposes to adopt new paragraph (2) to Interpretations and Policies .01(c) of Rule 518 to describe stock-option order processing on the Exchange for stock-option orders with non-conforming ratios. Proposed paragraph (2) will provide that, “the option leg(s) of a stock-option order with a non-conforming ratio shall not be executed (i) at a price that is inferior to the Exchange’s best bid (offer) in the option or (ii) at the Exchange’s best bid (offer) in that option if there are one or more Priority Customer Orders¹² resting on the Simple Order Book¹³ at the best bid (offer) price for any option leg of a stock-option order. Each component of a stock-option order with a non-conforming ratio must trade at a price better than any Priority Customer Order(s) resting on the Simple Order Book at the best bid (offer) price by at least \$0.01. The option leg(s) of a stock-option order may be executed in a \$0.01 increment, regardless of the minimum quoting increment applicable to that series.”¹⁴

Additionally, the Exchange’s proposal is consistent with the Exchange’s handling of complex orders with only options components with non-conforming ratios as Exchange Rule 518(c)(1)(v) provides that, a complex order with a non-conforming ratio will not be executed at a net price that would cause any option component of the complex strategy to be executed: (A) at a price of zero; (B) ahead of a Priority Customer Order at the MBBO¹⁵ on the

Simple Order Book; or (C) at a price that is through the NBBO.¹⁶ Like Exchange Rule 518(c)(1)(v) which requires each component of a complex order with a non-conforming ratio to trade at a price that is better than the MBBO if there is Priority Customer interest resting on the Simple Order Book at the MBBO, this proposal will protect Priority Customer interest by requiring that each leg of a stock-option order with a non-conforming ratio trade at a price that is \$0.01 better than any Priority Customer interest resting on the Simple Order Book at the best bid or offer.¹⁷ Thus the proposed rule continues to protect Priority Customer interest on the Exchange.

Implementation

The Exchange will announce the implementation of stock-option orders with non-conforming ratios by Regulatory Circular at least 48 hours prior to implementation of this functionality, as the Exchange believes that 48 hours of notice is adequate for Members.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act,¹⁸ 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section (6)(b)(5)¹⁹ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange currently only processes stock-option orders that fit within the definition of a conforming ratio, that is where one component of

that of other options exchanges. See Cboe Exchange Rule 5.33(f)(2)(A)(iv)(b); and BOX Exchange Rule 7240(b)(2)(iii).

¹⁶ 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.

¹⁷ See proposed Interpretations and Policies .01(c)(2) of Exchange Rule 518.

¹⁸ 15 U.S.C. 78f(b).

¹⁹ 15 U.S.C. 78(f)(b)(5).

⁷ See proposed Exchange Rule 518(a)(8).

⁸ See proposed Exchange Rule 518(a)(16).

⁹ See Exchange Rule 518(a)(5).

¹⁰ See Interpretations and Policies .01(a) of Exchange Rule 518.

¹¹ See *id.*

¹² The term “Priority Customer Order” means an order for the account of a Priority Customer. See Exchange Rule 100.

¹³ The “Simple Order Book” is the Exchange’s regular electronic book of orders and quotes. See Exchange Rule 518(a)(17).

¹⁴ See proposed Interpretations and Policies .01(c) of Rule 518.

¹⁵ The term “MBBO” means the best bid or offer on the Exchange. See Exchange Rule 100. The Exchange notes that this requirement is similar to

the complex order is the underlying instrument and the ratio between the option component(s) and the underlying instrument must be less than or equal to eight-to-one (8.00). The Exchange has received significant demand from its Members to support stock-option orders in non-conforming ratios, and the Exchange believes the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and benefit investors, because it will allow market participants to execute stock-option orders where one component of the complex order is the underlying security (stock or ETF) or security convertible into the underlying stock ("convertible security") and the ratio between the option component(s) and the underlying security (stock or ETF) or convertible security is greater than eight-to-one (8.00).

The proposed rule change will further remove impediments to and perfect the mechanism of a free and open market and a national market system, as at least two other options exchanges permit the trading of stock-option orders with non-conforming ratios. Specifically, Cboe and Cboe EDGX began supporting the electronic processing of stock-option orders in non-conforming ratios via Cboe's Complex Order Auctions ("COA");²⁰ Complex Order Book ("COB");²¹ Automated Improvement Mechanism ("AIM");²² and as Qualified Contingent Cross Orders ("QCC")²³ in August of 2022.²⁴ Additionally, the execution price for each option leg must improve the local BBO²⁵ by at least \$0.01 when there is a Priority Customer Order resting at the BBO on that leg,²⁶ which is the same requirement that

applies on the Exchange to all complex orders with non-conforming ratios.²⁷

Further, the Exchange's proposal promotes a free and open market and a national system and, in general, protects investors and the public interest by providing market participants an additional venue to route stock-option orders with non-conforming ratios to for execution. This provides investors an additional venue to choose from when making order-routing decisions.

The proposed change rule change will continue to protect Priority Customer Order interest on the Simple Order Book in the same manner as it does today, as all complex orders with a conforming ratio will continue to be executed on the Exchange without change.²⁸ As discussed above, the proposed Exchange rules provide that a stock-option order with a non-conforming ratio will not be executed (i) at a price that is inferior to the Exchange's best bid (offer) in the option or (ii) at the Exchange's best bid (offer) in that option if there are one or more Priority Customer Orders resting on the Simple Order Book at the best bid (offer) price for any option leg of a stock-option order. Each component of a stock-option order with a non-conforming ratio must trade at a price better than any Priority Customer Order(s) resting on the Simple Order Book at the best bid (offer) price by at least \$0.01.²⁹

The Exchange believes the proposed changes will increase opportunities for execution of stock-option orders with non-conforming ratios, which will benefit all investors. The Exchange also believes that the proposed rule change is designed to not permit unfair discrimination among market participants, as all market participants may trade stock-option orders with non-conforming ratios, and the priority and eligibility requirements apply equally to the stock-option orders with non-conforming ratios of all market participants.

The Exchange believes that its proposal is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by enhancing its System³⁰ and rules governing complex orders. The Exchange's proposal should provide market participants with

trading opportunities more closely aligned with their investment or risk management strategies and allow market participants to benefit from trading these orders electronically.

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.

The Exchange does not believe that its proposed rule change will impose any burden on intra-market competition as the Rules of the Exchange apply equally to all Members of the Exchange and all Members may submit stock-option orders with non-conforming ratios. Therefore, any Member of the Exchange may submit a stock-option order with a conforming or non-conforming ratio and the order will be handled in a uniform fashion by the System. Further, the Exchange's proposal protects investors as Priority Customer interest is protected and the Exchange's proposal prevents any option component of a stock-option order in a non-conforming ratio to be [sic] executed ahead of a Priority Customer Order.³¹

The Exchange does not believe that its proposed rule change will impose any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act, rather the Exchange believes that its proposal will promote inter-market competition. Currently, at least two other options exchanges process stock-option orders with ratios that are greater than eight-to-one.³² The Exchange's proposal will enhance inter-market competition by providing an additional venue where investors may electronically execute their stock-option orders with non-conforming ratios, giving investors greater flexibility and a choice of where to send their orders. Market participants may find it more convenient to access one exchange over another or may choose to concentrate volume at a particular exchange in order to maximize the impact of volume-based incentive programs, or may prefer the trade execution services of one exchange over another.

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

²⁰ See Cboe Exchange Rule 5.33(d).

²¹ See Cboe Exchange Rule 5.33(a).

²² See Cboe Exchange Rule 5.37.

²³ See "Qualified Contingent Cross or QCC" at Cboe Exchange Rule 5.6(c).

²⁴ See Cboe Exchange Alert, "Update—Cboe Options Introduces C-SAM Enhancement, New Net, Leg Price Increments, and Enhanced Handling for Complex Orders with Non-Conforming Ratios, Reference ID: C2022072700 available online at https://cdn.cboe.com/resources/release_notes/2022/Update-Cboe-Options-Introduces-C-SAM-Enhancement-New-Net-Leg-Price-Increments-and-Enhanced-Handling-for-Complex-Orders-with-Non-Conforming-Ratios.pdf.

²⁵ The term "BBO" means the best bid or offer disseminated on the Exchange. See Cboe Exchange Rule 1.1. The Exchange notes that at least one other options exchange offers stock-option orders with non-conforming ratios. See the definition of "Stock-Option Order" in Cboe Exchange Rule 1.1; and see also Cboe Exchange Rule 5.85(b)(3) which provides that, "stock-option orders . . . have priority over bids (offers) of in-crowd market participants but not over Priority Customer bids (offers) in the Book."

²⁶ See *supra* note 24. [sic]

²⁷ See Exchange Rule 518(c)(1)(v).

²⁸ See Exchange Rule 518(c)(1)(iv).

²⁹ See *supra* note 17.

³⁰ The term "System" means the automated trading system used by the Exchange for the trading of securities. See Exchange Rule 100.

³¹ See proposed Interpretations and Policies .01(c)(2) of Exchange Rule 518.

³² See *supra* note 24.

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 Act³³ and Rule 19b-4(f)(6)³⁴ thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)³⁵ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),³⁶ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange states that waiver of the operative delay will benefit investors by making available immediately an additional venue for trading stock-option orders in which the ratio between the options component(s) of the order and the underlying security component is greater than 8:1. The Exchange states that the proposal protects investors by requiring each option leg of a non-conforming ratio stock-option order, as defined in proposed Exchange Rule 518(a)(16), to trade at a price that is better than Priority Customer Order(s) resting on the Simple Order Book at the Exchange's best bid (offer) by at least \$0.01.³⁷ The Exchange notes that this requirement is consistent with the current requirements in Exchange Rule 518(c)(1)(v), which, among other things, states that a non-conforming ratio complex order comprised solely of options will not be executed at a net price that would cause any option component of the order to be executed ahead of a Priority Customer Order at

the MBBO on the Exchange's Simple Order Book.³⁸ As noted above, the Exchange states that it has received significant demand from its Members to support stock-option orders with non-conforming ratios. The Exchange further states that it will have surveillance procedures in place for stock-option orders with non-conforming ratios prior to implementing the functionality.

The Commission finds that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The rules of at least one other options exchange currently permit the trading on the exchange's floor of stock-option orders in which the ratio between the option component(s) of the order and the underlying security component is greater than 8:1.³⁹ The proposal will provide investors with an additional venue for trading these stock-option orders. The proposal protects the priority of Priority Customer orders resting on the Exchange's Simple Order Book by requiring each option component of a non-conforming ratio stock-option order to trade at a price that is better than any Priority Customer Order(s) resting on the Exchange's Simple Order Book at the best bid (offer) price by at least \$0.01.⁴⁰ This protection for Priority Customer orders is consistent with Exchange Rule 518(c)(1)(v), which, among other things, states that a non-conforming ratio complex order comprised solely of options will not be executed at a net price that would cause any option component of the order to be executed ahead of a Priority Customer Order at the MBBO on the Exchange's Simple

³⁸ See Exchange Rule 518(c)(1)(v).

³⁹ Cboe Rule 1.1 states that "A stock-option order is an order to buy or sell a stated number of units of an underlying or a related security coupled with either (a) the purchase or sale of option contract(s) on the opposite side of the market representing either the same number of units of the underlying or related security or the number of units of the underlying security necessary to create a delta neutral position or (b) the purchase or sale of an equal number of put and call option contracts, each having the same exercise price and expiration date, and each representing the same number of units of stock as, and on the opposite side of the market from, the underlying or related security portion of the order. For purposes of electronic trading, the term "stock-option order" has the meaning set forth in Rule 5.33." See also Cboe Rule 5.85(b)(3) (establishing the priority of stock-option orders on Cboe's floor).

⁴⁰ See proposed Exchange Rule 518, Interpretation and Policy .01(c)(2). Proposed Exchange Rule 518, Interpretation and Policy .01(c)(2) also states that the option leg(s) of a non-conforming ratio stock-option order may not be executed (i) at a price that is inferior to the Exchange's best bid (offer) in the option or (ii) at the Exchange's best bid (offer) in that option if there are one or more Priority Customer Orders resting on the Simple Order Book at the best bid (offer) price for any option leg of the order.

Order Book.⁴¹ In addition, like stock-option orders with a conforming ratio, stock-option orders with a non-conforming ratio must create a delta neutral position and comply with the requirements of the QCT Exemption.⁴² The Exchange states that it will have necessary surveillance procedures in place prior to introducing non-conforming ratio stock-option orders. For all of these reasons, the Commission designates the proposal operative upon filing.⁴³

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-MIAX-2023-20 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange

⁴¹ See Exchange Rule 518(c)(1)(v). Other options exchanges that provide for the trading of complex orders comprised solely of options that have a ratio greater than 3:1 provide the same protection for customer orders on their single-leg limit order books. See, e.g., Cboe Rule 5.33(f)(2)(A)(iv)(b) (stating that if the complex order has a ratio less than one-to-three (.333) or greater than three-to-one (3.00), the component(s) of the complex order for the leg(s) with a Priority Customer order at the BBO must execute at a price that improves the price of that Priority Customer order(s) on the Simple Order Book by at least one minimum increment); and BOX Rule 7240(b)(2)(iii) (stating that a Multi-Leg Order may be executed at a net credit or debit price; provided, however, that each component leg must execute (A) at or between the NBBO, and (B) at a price that is at least \$0.01 better than any Public Customer order on the BOX Book).

⁴² See proposed Exchange Rule 518(b)(5) and Exchange Rule 518, Interpretation and Policy .01(a).

⁴³ For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

³³ 15 U.S.C. 78s(b)(3)(A).

³⁴ 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.

³⁵ 17 CFR 240.19b-4(f)(6).

³⁶ 17 CFR 240.19b-4(f)(6)(iii).

³⁷ See proposed Exchange Rule 518, Interpretation and Policy .01(c)(2).

Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-MIAX-2023-20. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR-MIAX-2023-20 and should be submitted on or before June 13, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁴

Sherry R. Haywood,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97521; File No. SR-GEMX-2023-07]

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 7, Section 3

DATES: May 17, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

(“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 9, 2023, Nasdaq GEMX, LLC (“GEMX” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by 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 GEMX's Pricing Schedule at Options 7, Section 3, “Regular Order Fees and Rebates.”³

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/gemx/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

GEMX proposes to amend its Pricing Schedule at Options 7, Section 3, “Regular Order Fees and Rebates” to decrease the Penny Symbol Priority Customer⁴ Taker Fees.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Exchange originally filed SR-GEMX-2023-06 on May 1, 2023. On May 9, 2023, the Exchange withdrew SR-GEMX-2023-06 and replaced that filing with the instant filing.

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 Nasdaq GEMX Options 1, Section 1(a)(36). Unless otherwise noted, when used in the Pricing Schedule the term “Priority Customer” includes “Retail”. See Options 7, Section 1(c).

Today, GEMX assesses 5 tiers of Penny Symbol Taker Fees. Market Makers,⁵ and Non-Nasdaq GEMX Market Makers (FarMM)⁶ are assessed the following Penny Symbol Taker Fees: a Tier 1 Taker Fee of \$0.50 per contract; a Tier 2 Taker Fee of \$0.50 per contract; a Tier 3 Taker Fee of \$0.50 per contract; a Tier 4 Taker Fee of \$0.50 per contract; and a Tier 5 Taker Fee of \$0.48 per contract. In comparison, GEMX assesses Firm Proprietary⁷/Broker Dealers⁸ and Professional Customers⁹ the following Penny Symbol Taker Fees: a Tier 1 Taker Fee of \$0.50 per contract; a Tier 2 Taker Fee of \$0.50 per contract; a Tier 3 Taker Fee of \$0.50 per contract; a Tier 4 Taker Fee of \$0.50 per contract; and a Tier 5 Taker Fee of \$0.49 per contract. Finally, Priority Customers are assessed the following Penny Symbol Taker Fees: a Tier 1 Taker Fee of \$0.50 per contract; a Tier 2 Taker Fee of \$0.50 per contract; a Tier 3 Taker Fee of \$0.50 per contract; a Tier 4 Taker Fee of \$0.50 per contract; and a Tier 5 Taker Fee of \$0.43 per contract.

At this time, GEMX proposes to decrease the Penny Symbol Priority Customer Taker Fees. Specifically, GEMX proposes to decrease Penny Symbol Priority Customer Taker Fees Tiers 1 through 4 from \$0.48 per contract to \$0.41 per contract. Additionally, GEMX proposes to decrease Penny Symbol Priority Customer Taker Fee Tier 5 from \$0.43 to \$0.41 per contract. GEMX is not proposing to amend the Qualifying Tier Thresholds to achieve these tiers. GEMX believes that decreasing the Priority Customer Taker Fees in Penny Symbols will incentivize GEMX Members to send additional order flow to GEMX.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5)

⁵ The term “Market Makers” refers to “Competitive Market Makers” and “Primary Market Makers” collectively. See Options 1, Section 1(a)(21).

⁶ A “Non-Nasdaq GEMX 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 Options 7, Section 1(c).

⁷ A “Firm Proprietary” order is an order submitted by a member for its own proprietary account. See Options 7, Section 1(c).

⁸ A “Broker-Dealer” order is an order submitted by a member for a broker-dealer account that is not its own proprietary account. See Options 7, Section 1(c).

⁹ A “Professional Customer” is a person or entity that is not a broker/dealer and is not a Priority Customer.

¹⁰ See 15 U.S.C. 78f(b).

⁴⁴ 17 CFR 200.30-3(a)(12).