SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99788; File No. SR–ISE–2024–11]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Complex Order Rebates in the Exchange's Pricing Schedule at Options 7, Section 4

March 20, 2024.

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 March 8, 2024, 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, 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 the complex order rebates in the Exchange's Pricing Schedule at Options 7, Section 4.

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 purpose of the proposed rule change is to amend the complex order rebates in the Exchange's Pricing Schedule.[3] Today, as set forth in Options 7, Section 4, the Exchange offers tiered complex order Priority Customer[4] rebates for Select Symbols[5] and Non-Select Symbols[6] based on the Priority Customer Complex Tier achieved.[7] The tiered complex order Priority Customer rebates for Select Symbols and Non-Select Symbols are presently as follows:

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)	($0.50)
Tier 2	Above 0.200–0.400	(0.30)	(0.60)
Tier 3	Above 0.400–0.450	(0.35)	(0.75)
Tier 4	Above 0.450–0.750	(0.40)	(0.80)
Tier 5	Above 0.750–1.000	(0.45)	(0.85)
Tier 6	Above 1.000–1.350	(0.48)	(0.95)
Tier 7	Above 1.350–1.750	(0.54)	(1.00)
Tier 8	Above 1.750–2.750	(0.55)	(1.10)
Tier 9	Above 2.750–4.500	(0.56)	(1.12)
Tier 10	Above 4.500	(0.57)	(1.15)

The above rebates are provided per contract per leg if the order trades with Non-Priority Customer[8] orders in the complex order book.

The Exchange now proposes to modify Priority Customer Complex Tiers 3–5 in the following manner:

Priority Customer ComplexTier	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 3	Above 0.400–0.550	($0.40)	($0.80)
Tier 4	Above 0.550–0.750	(0.45)	(0.85)
Tier 5	Above 0.750–1.000	(0.46)	(0.90)

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

[2] 17 CFR 240.19b–4.

[3] The Exchange initially filed the proposed pricing changes on February 29, 2024 with an operative date of March 1, 2024 (SR–ISE–2024–08). On March 8, 2024, the Exchange withdrew that filing and replaced it with this 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 ISE Options 1, Section 1(a)(37).

[5] ''Select Symbols'' are options overlying all symbols listed on the Nasdaq ISE that are in the Penny Interval Program.

[6] ''Non-Select Symbols'' are options overlying all symbols excluding Select Symbols.

[7] Priority Customer Complex Tiers are based on 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. All Complex Order volume executed on the Exchange, including volume executed by Affiliated Members, is included in the volume calculation, except for volume executed as Crossing Orders and Responses to Crossing Orders. Affiliated Entities may aggregate their Complex Order volume for purposes of calculating Priority Customer Rebates. The Appointed OFP would receive the rebate associated with the qualifying volume tier based on aggregated volume. *See* Options 7, Section 4, note 16. As set forth in Options 7, Section 1(c), an Appointed OFP is an Order Flow Provider who has been appointed by a Market Maker for purposes of qualifying as an Affiliated Entity.

[8] ''Non-Priority Customers'' include Market Makers, Non-Nasdaq ISE Market Makers (FarMMs), Firm Proprietary/Broker-Dealers, and Professional Customers.

As amended, the rebates for Tiers 3–5 are increasing across the board for Select Symbols and Non-Symbols. In addition, the Exchange is adjusting the volume qualifications for Tiers 3 and 4 by increasing the upper limit of Tier 3 from 0.45% to 0.55% and the lower limit of Tier 4 from 0.45% to 0.55%. While the Exchange is increasing the volume qualifications in this manner, the Exchange is simultaneously increasing the related rebates such that Members who would fall within the 0.45% to 0.55% volume threshold range would receive the same rebate under this proposal as they would today (*i.e.,* $0.40 for Select Symbols and $0.80 for Non-Select Symbols). Accordingly, the Exchange expects that there will be little to no impact on Members who would currently fall within the 0.45% to 0.55% volume threshold range as a result of this change. Furthermore, the Exchange is increasing the Tier 5 rebates without changing the tier qualifications so that Members can send the same amount of complex order flow as they do today to receive the larger Priority Customer complex rebates described above. Overall, the Exchange believes that the proposed changes to Priority Customer Complex Tiers 3–5 will attract more complex order flow to ISE because Members may be incentivized to send more complex orders to ISE to receive the increased rebates.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[10] 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 Exchange's 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 securities 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,* the D.C. Circuit stated as follows: ''[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'. . ..'' [11]

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [12]

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options security transaction services. The Exchange is only one of seventeen 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. As such, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

The Exchange believes that the proposed changes to Priority Customer Complex Tiers 3–5 discussed above are reasonable because they are designed to attract more complex order flow to ISE to the benefit of all market participants. As discussed above, the rebates for Tiers 3–5 are increasing across the board for Select Symbols and Non-Symbols. In addition, the Exchange is adjusting the volume qualifications for Tiers 3 and 4 by increasing the upper limit of Tier 3 from 0.45% to 0.55% and the lower limit of Tier 4 from 0.45% to 0.55%. As discussed above, the Exchange expects there will be little to no impact on Members who would currently fall within the 0.45% to 0.55% volume threshold range as a result of this change because they would receive the same rebates under this proposal as they would today (*i.e.,* $0.40 for Select Symbols and $0.80 for Non-Select Symbols). The Exchange also believes that overall, all Members in Tiers 3 and 4 will benefit from the proposed rebates and that these rebates will continue to incentivize Members to send more complex order flow to ISE. Furthermore, the Exchange is increasing the Tier 5 rebates without changing the tier qualifications so that Members can send the same amount of complex order flow as they do today to receive the larger Priority Customer complex rebates described above. Overall, the Exchange believes that the proposed changes to Priority Customer Complex Tiers 3–5 will attract more complex order flow to ISE because Members may be incentivized to send more complex orders to ISE to receive the increased rebates.

The Exchange believes that offering the complex order Priority Customer rebate program, as modified, to only Priority Customers is equitable and not unfairly discriminatory as the proposed changes are intended to increase Priority Customer complex order flow to ISE. An increase in Priority Customer order flow enhances liquidity on the Exchange to the benefit of all market participants by providing more trading opportunities, which in turn attracts Market Makers and other market participants that may interact with this order flow.

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. In terms of intra-market competition, the Exchange does not believe that its proposal will place any category of market participant at a competitive disadvantage. While the proposed changes to the complex rebates described above apply directly to Priority Customers, the Exchange believes that the changes will ultimately fortify and encourage activity on the Exchange to the extent the proposed changes incentivize increased Priority Customer complex order flow to ISE. An increase in Priority Customer order flow enhances liquidity on the Exchange to the benefit of all market participants by providing more trading opportunities, which in turn attracts Market Makers and other market participants that may interact with this order flow.

In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4) and (5).

[11] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[12] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

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 fee changes in this market may impose any burden on competition is extremely limited. 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.

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

No written comments were either solicited or received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[13] 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 (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–ISE–2024–11 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–2024–11. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–ISE–2024–11 and should be submitted on or before April 16, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Sherry R. Haywood,

Assistant Secretary.

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[13] 15 U.S.C. 78s(b)(3)(A)(ii).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99814; File No. SR–PEARL–2024–13]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAX Pearl Options Fee Schedule for Purge Ports

March 20, 2024.

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 March 8, 2024, MIAX PEARL, LLC (''MIAX Pearl'' 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 the MIAX Pearl Options Exchange Fee Schedule (the ''Fee Schedule'') to amend fees for MIAX Express Network (''MEO'') [3] Purge Ports (''Purge Ports'').[4]

The text of the proposed rule change is available on the Exchange's website at *https://www.miaxglobal.com/markets/us-options/pearl-options/rule-filings* at MIAX Pearl'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.

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

[2] 17 CFR 240.19b–4.

[3] ''MEO Interface'' or ''MEO'' means a binary order interface for certain order types as set forth in Rule 516 into the MIAX Pearl System. *See* the Definitions Section of the Fee Schedule and Exchange Rule 100.

[4] The proposed fee change is based on a recent proposal by Nasdaq Phlx LLC (''Phlx'') to adopt fees for purge ports. *See* Securities Exchange Act Release No. 97825 (June 30, 2023), 88 FR 43405 (July 7, 2023) (SR–Phlx–2023–28).