

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-94136; File No. SR-EMERALD-2022-02)

February 2, 2022

Self-Regulatory Organizations: MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Exchange Rule 531 to Provide for the New Liquidity Taker Event Report – Complex Orders

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 27, 2022, MIAX Emerald, LLC (“MIAX Emerald” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend Exchange Rule 531(b) to provide for the new “Liquidity Taker Event Report – 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

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

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

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 currently offers the Liquidity Taker Event Report, which is a Member<sup>3</sup>-specific report and helps Members to better understand by how much time a particular order missed executing against a specific order resting on the Exchange’s Simple Order Book.<sup>4</sup> The current Liquidity Taker Event Report is described under Exchange Rule 531(a).<sup>5</sup>

The Exchange now proposes to amend Exchange Rule 531(b)<sup>6</sup> to provide for the new “Liquidity Taker Event Report – Complex Orders” (the “Complex Order Report”) which would be substantially similar to the existing Liquidity Taker Event Report, but would include data concerning a Member’s Complex Orders.<sup>7</sup> The Exchange also proposes to change the name of the existing Liquidity Taker Event Report to “Liquidity Taker Event Report – Simple Orders”

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<sup>3</sup> The term “Member” means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed “members” under the Exchange Act. See Exchange Rule 100.

<sup>4</sup> The term “Simple Order Book” means “the Exchange’s regular electronic book of orders and quotes.” See Exchange Rule 518(a)(15).

<sup>5</sup> See Securities Exchange Act Release No. 91787 (May 6, 2021), 86 FR 26111 (May 12, 2021) (SR-EMERALD-2021-09) (Order Approving Proposed Rule Change To Adopt Exchange Rule 531(a), Reports, To Provide for a New “Liquidity Taker Event Report”).

<sup>6</sup> Currently, Exchange Rule 531(b) is titled “Market Data Products” and provides the rule text for the Open-Close Report. See Exchange Rule 531(b). With this filing, the Exchange also proposes to move the rule text for Market Data Products to now be renumbered as Exchange Rule 531(c). The Exchange does not propose to amend any of the rule text for Market Data Products as currently stated in Exchange Rule 531.

<sup>7</sup> In sum, a “Complex Order” is “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 ....” See Exchange Rule 518(a)(5).

and amend Exchange Rule 531(a) accordingly (the “Liquidity Taker Event Report – Simple Orders” shall be referred to herein as the “Simple Order Report”).

The Simple Order Report includes information about incoming orders seeking to remove resting orders from the Simple Order Book. The proposed Complex Order Report would include the same information about incoming Complex Orders that seek to remove Complex Orders resting on the Strategy Book.<sup>8</sup> Two other differences between the proposed Complex Order Report and the Simple Order Report are that the proposed Complex Order Report will include the Complex EBBO<sup>9</sup> in place of the EBBO and Complex ABBO<sup>10</sup> in place of the ABBO, as described further below. These are minor differences designed to provide the EBBO and ABBO that are relevant to trading Complex Orders. Otherwise, the content and dissemination of the

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<sup>8</sup> The term “Complex Strategy” means “a particular combination of components and their ratios to one another. New complex strategies can be created as the result of the receipt of a complex order or by the Exchange for a complex strategy that is not currently in the System.” See Exchange Rule 518(a)(6). The term “Strategy Book” means the Exchange’s electronic book of complex orders and complex quotes. See Exchange Rule 518(a)(17). The Strategy Book is organized by Complex Strategy in that individual orders for a defined Complex Strategy are organized together in a book that is separate from the orders for a different Complex Strategy.

<sup>9</sup> The term “EBBO” means the Exchange’s best bid or offer. See Exchange Rule 100. The Complex EBBO for a particular Complex Strategy is calculated using the Implied Complex MIAX Emerald Best Bid or Offer (“icEBBO”) combined with the best price currently available for that particular Complex Strategy on the Strategy Book to establish the Exchange’s best net bid or offer for that Complex Strategy. The icEBBO is calculated using 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 is calculated using the best price (whether displayed or non-displayed) on the Simple Order Book in the individual option component(s), and the NBBO in the stock component. See Exchange Rule 518(a)(12).

<sup>10</sup> The term “ABBO” or “Away Best Bid or Offer” means the best bid(s) or offer(s) disseminated by other Eligible Exchanges (defined in Exchange Rule 1400(g)) and calculated by the Exchange based on market information received by the Exchange from the Options Price Reporting Authority (“OPRA”). See Exchange Rule 100. The Complex ABBO is calculated using the ABBO for each component of a Complex Strategy to establish the away markets’ best net bid or offer for a Complex Strategy.

proposed Complex Order Report set forth under amended Exchange Rule 531(b) will be identical to that of the Simple Order Report under Exchange Rule 531(a). Other than the difference set forth above, the Exchange represents that there are no other differences between Simple Orders and Complex Orders that would necessitate any other changes to the proposed Complex Order Report or render the effects or use of the proposed Complex Order Report as different from the Simple Order Report.

Like the Simple Order Report, the proposed Complex Order Report is an optional product<sup>11</sup> available to Members. Currently, the Exchange provides real-time prices and analytics in the marketplace. The Exchange believes the additional data points from the matching engine outlined below may help Members gain a better understanding about their Complex Order interactions with the Exchange. The Exchange believes the proposed Complex Order Report will provide Members with an opportunity to learn more about better opportunities to access liquidity and receive better execution rates when trading Complex Orders. The proposed Complex Order Report will increase transparency and democratize information so that all firms that subscribe to the proposed Complex Order Report have access to the same information on an equal basis, even for firms that do not have the appropriate resources to generate a similar report regarding interactions with the Exchange. Like the Simple Order Report, none of the components of the proposed Complex Order Report include real-time market data.

Members generally would use a liquidity accessing order if there is a high probability that it will execute against an order resting on the Exchange's Simple Order Book. Like the Simple Order Report, the proposed Complex Order Report would identify by how much time an order that may have been marketable missed an execution. In the case of the proposed Complex Order

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<sup>11</sup> The Exchange intends to submit a separate filing with the Commission pursuant to Section 19(b)(1) to propose fees for the proposed Complex Order Report.

Report, the incoming order would be a Complex Order submitted to trade against a resting order for a Complex Strategy. The proposed Complex Order Report will provide greater visibility into the missed trading execution, which will allow Members to optimize their models and trading patterns to yield better execution results when trading Complex Orders.

Like the Simple Order Report, the proposed Complex Order Report will be a Member-specific report and will help Members to better understand by how much time a particular order, in this case a Complex Order, missed executing against a specific resting order, thus allowing that Member to determine whether it wants to invest in the necessary resources and technology to mitigate missed executions against certain resting orders on the Exchange's Strategy Book. For example, Member A submits a Complex Order that is posted to the Strategy Book and then, within 200 microseconds of the entry of Member A's Complex Order, Member B enters a marketable Complex Order to execute against Member A's resting Complex Order. Immediately thereafter, Member C also within 200 microseconds of the entry of Member A's Complex Order, sends a marketable Complex Order to execute against Member A's resting Complex Order. Because Member B's Complex Order is received by the Exchange before the Complex Order for Member C Member B's Complex Order executes against Member A's resting Complex Order. If Member C were to subscribe to the proposed Complex Order Report, it would be provided the data points necessary for that firm to calculate by how much time they missed executing against Member A's resting Complex Order.

Like the Simple Order Report, the Exchange proposes to provide the proposed Complex Order Report on a T+1 basis. As further described below, the proposed Complex Order Report will be specific and tailored to the Member that is subscribed to the Complex Order Report and any data included in the Complex Order Report that relates to a Member other than the Member receiving the Complex Order Report will be anonymized.

The Exchange proposes to provide the Complex Order Report in response to Member demand for data concerning the timeliness of their incoming Complex Orders and executions against resting orders. Members have found the existing Simple Order Report helpful and have periodically requested similar information from the Exchange regarding their Complex Orders. This has come in the form of requests by Members to the Exchange's trading operations personnel for information concerning the timeliness of their incoming Complex Orders and efficacy of their attempts to execute against resting liquidity on the Exchange's Strategy Book. The purpose of the proposed Complex Order Report is to provide Recipient Members the necessary data in a standardized format on a T+1 and equal basis.

Similar to current Exchange Rule 531(a) regarding the Simple Order Report, amended Exchange Rule 531(b) would provide that the proposed Complex Order Report is a daily report that provides a Member ("Recipient Member") with its liquidity response time details for executions of an order resting on the Strategy Book, where that Recipient Member submitted a Complex Order that attempted to execute against such resting Complex Order within a certain timeframe.

#### Report Content

The content of the proposed Complex Order Report would be identical to the Simple Order Report, but for two minor differences discussed below. Paragraph (b)(1) of Rule 531 would describe the content of the proposed Complex Order Report and delineate which information would be provided regarding the resting order,<sup>12</sup> the response that successfully executed against the resting order, and the response submitted by the Recipient Member that

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<sup>12</sup> Like the Simple Order Report, only displayed orders will be included in the proposed Complex Order Report. The Exchange notes that it does not currently offer any non-displayed order types on its options trading platform.

missed executing against the resting order. It is important to note that the content of the proposed Complex Order Report will be specific to the Recipient Member and the proposed Complex Order Report will not include any information related to any Member other than the Recipient Member. The Exchange will restrict all other market participants, including the Recipient Member, from receiving another market participant's data.

*Resting Order Information.* The content of the proposed Complex Order Report set forth under amended Exchange Rule 531(b)(1)(i) is identical to the content of the Simple Order Report under Exchange Rule 531(a)(1)(i). However, as noted above, the content of the proposed Complex Order Report would be limited to incoming Complex Orders that seek to remove liquidity from the Exchange's Strategy Book.

Amended Exchange Rule 531(b)(1)(i) would provide that the following information would be included in the proposed Complex Order Report regarding the resting order: (A) the time the resting order was received by the Exchange;<sup>13</sup> (B) symbol;<sup>14</sup> (C) order reference number, which is a unique reference number assigned to a new Complex Order at the time of receipt;<sup>15</sup> (D) whether the Recipient Member is an Affiliate<sup>16</sup> of the Member that entered the

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<sup>13</sup> This information is also included in the Simple Order Report. See Exchange Rule 531(a)(1)(i)(A).

<sup>14</sup> This information is also included in the Simple Order Report. See Exchange Rule 531(a)(1)(i)(B).

<sup>15</sup> This information is also included in the Simple Order Report. See Exchange Rule 531(a)(1)(i)(C).

<sup>16</sup> The term "affiliate" of or person "affiliated with" another person means a person who, directly, or indirectly, controls, is controlled by, or is under common control with, such other person. See Exchange Rule 100.

resting order<sup>17</sup>; (E) origin type (e.g., Priority Customer,<sup>18</sup> Market Maker<sup>19</sup>);<sup>20</sup> (F) side (buy or sell);<sup>21</sup> and (G) displayed price and size of the resting order.<sup>22</sup>

*Execution Information.* Amended Exchange Rule 531(b)(1)(ii) would provide that the following information would be included in the proposed Complex Order Report regarding the execution of the resting order: (A) the Complex EBBO at the time of execution;<sup>23</sup> (B) the Complex ABBO at the time of execution;<sup>24</sup> (C) the time the first response that executes against the resting order was received by the Exchange and the size of the execution and type of the

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<sup>17</sup> This information is also included in the Simple Order Report. See Exchange Rule 531(a)(1)(i)(D). The Report will simply indicate whether the Recipient Member is an Affiliate of the Member that entered the resting order and not include any other information that may indicate the identity of the Member that entered the resting order.

<sup>18</sup> The term “Priority Customer” means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). The number of orders shall be counted in accordance with Interpretation and Policy .01 to Exchange Rule 100. See Exchange Rule 100.

<sup>19</sup> The term “Market Maker” refers to “Lead Market Makers”, “Primary Lead Market Makers” and “Registered Market Makers” collectively. See Exchange Rule 100.

<sup>20</sup> This information is also included in the Simple Order Report. See Exchange Rule 531(a)(1)(i)(E).

<sup>21</sup> This information is also included in the Simple Order Report. See Exchange Rule 531(a)(1)(i)(F).

<sup>22</sup> This information is also included in the Simple Order Report. See Exchange Rule 531(a)(1)(i)(G). The Exchange notes that the displayed price and size are also disseminated via the Exchange’s proprietary data feeds.

<sup>23</sup> Similar information is included in the Simple Order Report. Exchange Rule 531(b)(1)(ii)(A) would similarly provide that if the resting order executes against multiple contra-side responses, only the Complex EBBO at the time of the execution against the first response will be included.

<sup>24</sup> Similar information is included in the Simple Order Report. See Exchange Rule 531(a)(1)(ii)(B). Exchange Rule 531(b)(1)(ii)(B) would similarly provide that if the resting order executes against multiple contra-side responses, only the Complex ABBO at the time of the execution against the first response will be included.

response;<sup>25</sup> (D) the time difference between the time the resting order was received by the Exchange and the time the first response that executes against the resting order was received by the Exchange;<sup>26</sup> and (E) whether the response was entered by the Recipient Member.<sup>27</sup> If the resting order executes against multiple contra-side responses, only the Complex EBBO and Complex ABBO at the time of the execution against the first response will be included.

The content of the proposed Complex Order Report set forth under amended Exchange Rule 531(b)(1)(ii) is identical to the content of the Simple Order Report under Exchange Rule 531(a)(1)(ii) with two minor differences. The Simple Order Report includes the EBBO, which is the Exchange's best bid or offer, and the ABBO, which is the best bid or offer of away exchanges. In their place, the proposed Complex Order Report would include the Complex EBBO and Complex ABBO. The Complex EBBO is calculated using the EBBO for each component of a Complex Strategy to establish the Exchange's best net bid or offer for a Complex Strategy. As discussed above, the Complex EBBO is calculated using the icEBBO combined with the best price currently available on the Strategy Book to establish the

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<sup>25</sup> This information is also included in the Simple Order Report. See Exchange Rule 531(a)(1)(ii)(C). The time the Exchange received the response order would be in nanoseconds and would be the time the response was received by the Exchange's network, which is before the time the response would be received by the System. The type of responses that would be identified in the proposed Complex Order Report are Standard Quotes and eQuotes. A "Standard Quote" is a quote submitted by a Market Maker that cancels and replaces the Market Maker's previous Standard Quote, if any. See Exchange Rule 517(a)(1). An "eQuote" is a quote with a specific time in force that does not automatically cancel and replace a previous Standard quote or eQuote. An eQuote can be cancelled by the Market Maker at any time, or can be replaced by another eQuote that contains specific instructions to cancel an existing eQuote. See Exchange Rule 517(a)(2).

<sup>26</sup> The time difference would be provided in nanoseconds. This information is also included in the Simple Order Report. See Exchange Rule 531(a)(1)(ii)(D).

<sup>27</sup> This information is also included in the Simple Order Report. See Exchange Rule 531(a)(1)(ii)(E).

Exchange's best net bid or offer for a Complex Strategy.<sup>28</sup> The Complex ABBO is calculated using the ABBO for each component of a Complex Strategy to establish the away markets' best net bid or offer for a Complex Strategy using OPRA data. The Exchange is providing the Complex EBBO and Complex ABBO because both are relevant and tailored to a Member that is entering a Complex Order to remove liquidity as part of a Complex Strategy and, therefore, more germane to the purpose of the Complex Order Report.

*Recipient Member's Response Information.* The content of the proposed Complex Order Report set forth under amended Exchange Rule 531(b)(1)(iii) is identical to the content of the Simple Order Report under Exchange Rule 531(a)(1)(iii). Amended Exchange Rule 531(b)(1)(iii) would provide that the following information would be included in the Complex Order Report regarding Complex Order(s) sent by the Recipient Member: (A) Recipient Member identifier;<sup>29</sup> (B) the time difference between the time the first response that executes against the resting order was received by the Exchange and the time of each Complex Order sent by the Recipient Member, regardless of whether it executed or not;<sup>30</sup> (C) size and type of each Complex Order submitted by the Recipient Member;<sup>31</sup> and (D) response reference number, which is a unique reference number attached to the response by the Recipient Member.<sup>32</sup>

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<sup>28</sup> See also supra note 9.

<sup>29</sup> This information is also included in the Simple Order Report. See Exchange Rule 531(a)(1)(iii)(A).

<sup>30</sup> This information is also included in the Simple Order Report. See Exchange Rule 531(a)(1)(iii)(B). For purposes of calculating this duration of time, the Exchange will use the time the resting order and the Recipient Member's response(s) is received by the Exchange's network, both of which would be before the order and response(s) would be received by the System. This time difference would be provided in nanoseconds.

<sup>31</sup> This information is also included in the Simple Order Report. See Exchange Rule 531(a)(1)(iii)(C).

<sup>32</sup> This information is also included in the Simple Order Report. See Exchange Rule 531(a)(1)(iii)(D).

### Timeframe for Data Included in Report

The timeframe for data to be included in the proposed Complex Order Report set forth under amended Exchange Rule 531(b)(2) is identical to the timeframe for data included in the Simple Order Report under Exchange Rule 531(a)(2). Paragraph (b)(2) of Exchange Rule 531 would provide that the Complex Order Report would include the data set forth under Exchange Rule 531(b)(1) described above for executions and contra-side responses that occurred within 200 microseconds of the time the resting order was received by the Exchange. The Exchange believes 200 microseconds is the appropriate timeframe because it understands most Members that would be interested in subscribing to the proposed Complex Order Report would submit their incoming liquidity removing Complex Orders within 200 microseconds of the time a contra-side Complex Order is posted to the Strategy Book.

### Scope of Data Included in the Report

The scope of data to be included in the proposed Complex Order Report set forth under amended Exchange Rule 531(b)(3) is identical to the scope of data included in the Simple Order Report under Exchange Rule 531(a)(3). Paragraph (b)(3) of Exchange Rule 531 would provide that the Complex Order Report will only include trading data related to the Recipient Member and, subject to the proposed paragraph (4) of Exchange Rule 531(b) described below, will not include any other Member's trading data other than that listed in paragraphs (1)(i) and (ii) of Exchange Rule 531(b), described above. Like the Simple Order Report, the proposed Complex Order Report will not include information related to any Member other than the Recipient Member.<sup>33</sup>

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<sup>33</sup> See Exchange Rule 531(a)(3).

## Historical Data

Paragraph (b)(4) of Exchange Rule 531 would specify that the Complex Order Report will contain historical data from the prior trading day and will be available after the end of the trading day, generally on a T+1 basis. This is identical to the timeframe for when the Simple Order Report is made available.<sup>34</sup>

## 2. Statutory Basis

The Exchange believes the 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.<sup>35</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>36</sup> requirements that the rules of an exchange be 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 mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. This proposal is in keeping with those principles in that it promotes increased transparency through the dissemination of the optional Complex Order Report to those interested in subscribing to receive the data. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>37</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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<sup>34</sup> See Exchange Rule 531(a)(4).

<sup>35</sup> 15 U.S.C. 78f(b).

<sup>36</sup> 15 U.S.C. 78f(b)(5).

<sup>37</sup> Id.

But for three differences, the description of the proposed Complex Order Report under Exchange Rule 531(b) is identical to that of the Simple Order Report under Exchange Rule 531(a), which was recently approved by the Commission.<sup>38</sup> The first difference concerns the content of the proposed Complex Order Report, which would be limited to incoming Complex Orders that seek to remove liquidity from the Exchange's Strategy Book. The Simple Order Report includes information about incoming orders seeking to remove liquidity from the Simple Order Book. This difference is immaterial because both reports include basically the same information and seek to serve the same purpose, to provide the Recipient Member with the same type of data necessary for them to evaluate their own trading behavior and order interactions on the Exchange; however, the Simple Order Report contains data relevant to the Simple Order Book while the proposed Complex Order Report contains data relevant to the Strategy Book.

The other two differences are that the Simple Order Report includes the EBBO, which is the Exchange's best bid or offer, and the ABBO, which is the best bid or offer of away exchanges. In their place, the proposed Complex Order Report would include the Complex EBBO and Complex ABBO. As discussed above, the Complex EBBO is calculated using the icEBBO combined with the best price currently available on the Strategy Book to establish the Exchange's best net bid or offer for a Complex Strategy.<sup>39</sup> The Complex ABBO is calculated using the ABBO for each component of a Complex Strategy to establish the away markets' best net bid or offer for a Complex Strategy using OPRA data. The Exchange is providing the Complex EBBO and Complex ABBO because both are relevant and tailored to a Member that is entering a Complex Order to remove liquidity as part of a Complex Strategy and, therefore, more

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<sup>38</sup> See supra note 5.

<sup>39</sup> See also supra note 9.

germane to the purpose of the Complex Order Report. The Exchange believes these differences are appropriate because providing the Complex EBBO in place of the EBBO and the Complex ABBO in place of the ABBO are more germane to the purpose of the proposed Complex Order Report.

Like the Simple Order Report, the Exchange believes the proposed Complex Order Report will serve to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general protect investors and the public interest by providing Members access to information regarding their trading activity that they may utilize to evaluate their own Complex Order trading behavior and order interactions. Also, like the Simple Order Report, the proposed Complex Order Report is designed for Members that are interested in gaining insight into latency in connection with Complex Orders that failed to execute against an order resting on the Exchange's Strategy Book by providing those Members data to analyze by how much time their Complex Order may have missed an execution against a contra-side order resting on the Strategy Book. The Exchange believes that providing this optional latency data to interested Members is consistent with facilitating transactions in securities, removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest because it provides greater visibility into the latency of Members' incoming orders that they may use to optimize their models and trading patterns in an effort to yield better execution results by calculating by how much time their order may have missed an execution. This would, in turn, benefit other market participants who may experience better executions on the Exchange because those that use the proposed Complex Order Report may re-calibrate their trading models and then increase their trading on the Exchange and volume of liquidity removing orders. This could lead to an increase in incoming liquidity removing orders resulting in higher

execution rates for Members who primarily place resting orders on the Strategy Book. The proposed Complex Order Report may benefit other market participants who would receive greater fill rates, thereby facilitating transactions in securities and perfecting the mechanism of the national market system.

As discussed above, the Exchange currently fields ad hoc requests from Members for information regarding the timeliness of their attempts to execute against resting options liquidity on the Exchange's Strategy Book. The proposal promotes just and equitable principles of trade because it would provide latency information in a systematized way and standardized format to any Member that chooses to subscribe to the proposed Complex Order Report. As a result, the proposal would also remove impediments to and perfect the mechanism of a free and open market and a national market system by making latency information for liquidity-seeking orders available in a more equalized manner. The proposal further promotes just and equitable principles of trade by increasing transparency, particularly for Recipient Members that may not have the expertise to generate the same information on their own. The proposed Complex Order Report may better enable Recipient Members to increase the fill rates for their liquidity-seeking Complex Orders. At the same time, as is also discussed above, the Complex Order Report promotes just and equitable principles of trade and protects investors and the public interest because it is designed to prevent a Recipient Member from learning other Members' sensitive trading information. The Complex Order Report would not be a real-time market data product, as it would provide only historical trading data for the previous trading day, generally on a T+1 basis. In addition, the data in the Complex Order Report regarding incoming orders that failed to execute would be specific to the Recipient Member's Complex Orders, and other information in the proposed Complex Order Report regarding resting orders and executions would be anonymized if it relates to a Member other than the Recipient Member.

The Complex Order Report generally would contain three buckets of information. The first two buckets include information about the resting order and the execution of the resting order. This information is available from the Exchange's proprietary data feeds or derivable from OPRA. For example, the Exchange offers the Complex Top of Market ("cToM") feed which provides real-time quote and last sale information for all displayed orders on the Strategy Book.<sup>40</sup>

Specifically, the first bucket of information contained in the proposed Complex Order Report for the resting order would include the time the resting order was received by the Exchange, the symbol, unique reference number assigned at the time of receipt, side (buy or sell), and the displayed price and size of the resting order. The symbol, origin type, side (buy or sell), and displayed price and size are also available via the Exchange's proprietary data feeds. The first bucket of information would also indicate whether the Recipient Member is an Affiliate of the Member that entered the resting order. This data field would not indicate the identity of the Member that entered the resting order and would simply allow the Recipient Member to better understand the scenarios in which it may execute against the orders of its Affiliates.<sup>41</sup>

The second bucket of information contained in the proposed Complex Order Report pertains to the execution of the resting order and includes the Complex EBBO and Complex ABBO at the time of execution. These data points are also derivable from information disseminated via OPRA or available via the Exchange's proprietary data feeds. The second bucket of information would also indicate whether the response was entered by the Recipient Member. This data point would be simply provided as a convenience. If not entered by the

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<sup>40</sup> See Section 6)a) of the Exchange's Fee Schedule.

<sup>41</sup> The Exchange surveils to monitor for aberrant behavior related to internalized trades and identify potential wash sales.

Recipient Member, this data point would be left blank so as not to include any identifying information about other Member activity. The second bucket of information would also include the size, time and type of first response<sup>42</sup> that executes against the resting order; as well as the time difference between the time the resting order and first response that executes against the resting order are received by the Exchange. These data points would assist the Recipient Member in analyzing by how much time their order may have missed an execution against a contra-side order resting on the Strategy Book.

The third bucket of information would be about the Recipient Member's response(s) and the time their response(s) is received by the Exchange. This would include the time difference between the time the first response that executes against the resting order was received by the Exchange and the time of each response sent by the Recipient Member, regardless of whether it executed or not. As above, this data point would assist the Recipient Member in analyzing by how much time their order may have missed an execution against a contra-side order resting on the Strategy Book. This bucket would also include the size and type of each response submitted by the Recipient Member, the Recipient Member identifier, and a response reference number, which is selected by the Recipient Member. Each of these data points are unique to the Recipient Member and should already be known by the Recipient Member even if not included in the Complex Order Report.

The Exchange proposes to provide the Complex Order Report on a voluntary basis and no Member will be required to subscribe to the Complex Order Report. The Exchange notes that there is no rule or regulation that requires the Exchange to produce, or that a Member elect to receive, the proposed Complex Order Report. It would be entirely a business decision of each

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<sup>42</sup> See supra note 25.

Member to subscribe to the proposed Complex Order Report. The Exchange proposes to offer the Complex Order Report as a convenience to Members to provide them with additional information regarding trading activity on the Exchange on a delayed basis after the close of regular trading hours. A Member that chooses to subscribe to the proposed Complex Order Report may discontinue receiving the Complex Order Report at any time if that Member determines that the information contained in the Complex Order Report is no longer useful.

In summary, the proposed Complex Order Report will help to protect a free and open market by providing additional data (offered on an optional basis) to the marketplace and by providing investors with greater choices.<sup>43</sup> Additionally, the proposal would not permit unfair discrimination because the proposed Complex Order Report will be available to all Exchange Members.

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

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

Inter-Market Competition

The proposed Complex Order Report will allow the Exchange to provide a new option for Members to receive historical latency related data. The proposed Complex Order Report will also further enhance inter-market competition between exchanges by allowing the Exchange to expand its product offerings. The latency information that would be provided in the proposed Complex Order Report would enhance competition between exchanges that offer complex order

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<sup>43</sup> See Sec. Indus. Fin. Mkts. Ass'n (SIFMA), Initial Decision Release No. 1015, 2016 SEC LEXIS 2278 (ALJ June 1, 2016) (finding the existence of vigorous competition with respect to non-core market data).

functionality because it would allow Recipient Members to recalibrate their models and trading strategies to improve their overall trading experience on the Exchange. This may improve the Exchange's overall trading environment resulting in increased liquidity and order flow on the Exchange. In response, other exchanges may similarly seek ways to provide latency related data in an effort to improve their own market quality.

#### Intra-Market Competition

The proposed rule change to offer the optional Complex Order Report is in response to Member interest and requests for such information. The Exchange does not believe the proposed Complex Order Report will have an inappropriate burden on intra-market competition between Recipient Members and other Members who choose not to receive the Complex Order Report. As discussed above, the first two buckets of information included in the Complex Order Report contain information about the resting order and the execution of the resting order, both of which are generally available to Members that choose not to receive the Complex Order Report from other sources, such as by deriving these data points from OPRA or obtaining them from the Exchange's proprietary data feeds. The third bucket of information pertains to the Recipient Member's response and the time their response is received by the Exchange, information which latency sensitive Members that do not subscribe to the proposed Complex Order Report could obtain on their own based on their knowledge of when they sent their response to the Exchange and via timestamp information provided by the acknowledgment message received from the Exchange. However, latency sensitive Members that do not subscribe to the proposed Complex Order Report would not be able to obtain the time difference between the time the first response that executes against the resting order was received by the Exchange and the time of each response sent by the Recipient Member. Such latency sensitive Members may not view this information as beneficial based on their own trading models and systems. Other Members that

do not subscribe to the proposed Complex Order Report may not view the entire proposed Complex Order Report as useful due to their own trading behaviors and business models. Such Members may not be latency sensitive and may be interested primarily in providing resting liquidity on the Exchange's Strategy Book, or they may simply be connected to the Exchange for best execution purposes or to comply with the trade-through requirements under Chapter XIV of the Exchange's Rules.<sup>44</sup> Additionally, some Members may already be able to derive a substantial amount of the same data that is provided by some of the components based on their own executions and algorithms.

In sum, if the proposed Complex Order Report is unattractive to Members, Members will opt not to receive it. Accordingly, the Exchange does not believe that the proposed change 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

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

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<sup>44</sup> Chapter XIV of the Exchange Rules incorporates by reference Rule 1401, Order Protection, of the Exchange's affiliate, the Miami International Securities Exchange, LLC.

Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act<sup>45</sup> and Rule 19b-4(f)(6)<sup>46</sup> 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.

#### 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-EMERALD-2022-02 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-2022-02. This file number should be included on the subject line if e-mail is used. To help the Commission process and review

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<sup>45</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>46</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-EMERALD-2022-02 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>47</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>47</sup> 17 CFR 200.30-3(a)(12).