

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be 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-NASDAQ-2014-059 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-NASDAQ-2014-059. 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 Web site (<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 Web site 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2014-059 and should be submitted on or before July 7, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³²

Kevin M. O'Neill,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-72356; File No. SR-MIAX-2014-26]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

June 10, 2014.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 27, 2014, 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, 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 is filing a proposal to amend the MIAX Options Fee Schedule.

The text of the proposed rule change is available on the Exchange's Web site at http://www.miaxoptions.com/filter/wotitle/rule_filing, at MIAX's principal office, and at the Commission's Public Reference Room.

³² 17 CFR 200.30-3(a)(12).

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Priority Customer Rebate Program (the "Program")³ to expand the number of option classes that qualify for a \$0.20 per contract credit for transactions in MIAX Select Symbols.⁴

The Program is based on the substantially similar fees of another competing options exchange.⁵ Under the Program, the Exchange credits each Member the per contract amount set forth in the table below resulting from each Priority Customer⁶ order transmitted by that Member which is executed on the Exchange in all multiply-listed option classes (excluding mini-options and executions related to contracts that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan referenced in Rule 1400), provided the Member meets certain volume thresholds in a month. For each Priority Customer order transmitted by that Member which is

³ See Securities Exchange Act Release Nos. 71698 (March 12, 2014), 79 FR 15185 (March 18, 2014) (SR-MIAX-2014-12); 71700 (March 12, 2014), 79 FR 15188 (March 18, 2014) (SR-MIAX-2014-13); 71283 (January 10, 2014), 79 FR 2914 (January 16, 2014) (SR-MIAX-2013-63); 71009 (December 8, 2013), 78 FR 75629 (December 12, 2013) (SR-MIAX-2013-56).

⁴ The term "MIAX Select Symbols" currently means options overlying AAPL, FB, EEM, QQQ, and IWM.

⁵ See Chicago Board Options Exchange, Incorporated ("CBOE") Fees Schedule, p. 4. See also Securities Exchange Act Release Nos. 66054 (December 23, 2011), 76 FR 82332 (December 30, 2011) (SR-CBOE-2011-120); 68887 (February 8, 2013), 78 FR 10647 (February 14, 2013) (SR-CBOE-2013-017).

⁶ 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 accounts(s). See MIAX Rule 100.

executed electronically on the Exchange in MIA X Select Symbols, MIA X shall credit each member at the separate per contract rate for MIA X Select Symbols. The volume thresholds are calculated based on the customer average daily volume over the course of the month. Volume is recorded for and credits are delivered to the Member Firm that submits the order to the Exchange. The Exchange aggregates the contracts resulting from Priority Customer orders transmitted and executed electronically on the Exchange from affiliated Members for purposes of the thresholds above, provided there is at least 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A. In the event of a MIA X System outage or other interruption of electronic trading on MIA X, the Exchange adjusts the national customer volume in multiply-listed options for the duration of the outage. A Member may request to receive its credit under the Program as a separate direct payment.

The Exchange proposes modifying the Program to expand the number of option classes that qualify for a \$0.20 per contract credit for transactions in MIA X Select Symbols. MIA X Select Symbols currently include options overlying AAPL, FB, EEM, QQQ, and IWM. The Exchange proposes to modify the MIA X Select Symbols to add AAL, AIG, AMZN, AZN, BP, C, CMCSA, EBAY, EFA, FCX, FXI, GILD, GLD, INTC, IYR, JCP, JPM, NFLX, NQ, PCLN, PFE, PG, S, SUNE, T, TSLA, VALE, WFC, XLE, XLF, and XOM. Thus, the Exchange will credit each Member \$0.20 per contract resulting from each Priority Customer order transmitted by that Member executed on Exchange in AAL, AAPL, AIG, AMZN, AZN, BP, C, CMCSA, EBAY, EEM, EFA, FB, FCX, FXI, GILD, GLD, INTC, IWM, IYR, JCP, JPM, NFLX, NQ, PCLN, PFE, PG, QQQ, S, SUNE, T, TSLA, VALE, WFC, XLE, XLF, and XOM. The \$0.20 per contract credit would be in lieu of the applicable credit that would otherwise apply to the transaction based on the volume thresholds. The Exchange notes that all the other aspects of the Program would continue to apply to the credits (*e.g.*, the aggregation of volume of affiliates, exclusion of contracts that are routed to away exchanges, exclusion of mini-options * * * etc.).⁷

⁷ See MIA X Options Fee Schedule, p. 3. See also Securities Exchange Act Release Nos. 71698 (March 12, 2014), 79 FR 15185 (March 18, 2014) (SR-MIA X-2014-12); 71700 (March 12, 2014), 79 FR 15188 (March 18, 2014) (SR-MIA X-2014-13); 71283 (January 10, 2014), 79 FR 2914 (January 16, 2014) (SR-MIA X-2013-63); 71009 (December 6,

For example, if Member Firm ABC, Inc. ("ABC") has enough Priority Customer contracts to achieve 0.3% of the national customer volume in multiply-listed option contracts during the month of October, ABC will receive a credit of \$0.10 for each Priority Customer contract executed in the month of October. However, any qualifying Priority Customer transactions during such month that occurred in AAL, AAPL, AIG, AMZN, AZN, BP, C, CMCSA, EBAY, EEM, EFA, FB, FCX, FXI, GILD, GLD, INTC, IWM, IYR, JCP, JPM, NFLX, NQ, PCLN, PFE, PG, QQQ, S, SUNE, T, TSLA, VALE, WFC, XLE, XLF, and XOM would be credited at the \$0.20 per contact rate versus the standard credit of \$0.10. Similarly, if Member Firm XYZ, Inc. ("XYZ") has enough Priority Customer contracts to achieve 2.5% of the national customer volume in multiply-listed option contracts during the month of October, XYZ will receive a credit of \$0.18 for each Priority Customer contract executed in the month of October. However, any qualifying Priority Customer transactions during such month that occurred in AAL, AAPL, AIG, AMZN, AZN, BP, C, CMCSA, EBAY, EEM, EFA, FB, FCX, FXI, GILD, GLD, INTC, IWM, IYR, JCP, JPM, NFLX, NQ, PCLN, PFE, PG, QQQ, S, SUNE, T, TSLA, VALE, WFC, XLE, XLF, and XOM would be credited at the \$0.20 per contact rate versus the standard credit of \$0.18.

The purpose of the amendment to the Program is to further encourage Members to direct greater Priority Customer trade volume to the Exchange in these high volume symbols. Increased Priority Customer volume will provide for greater liquidity, which benefits all market participants on the Exchange. The practice of incentivizing increased retail customer order flow in order to attract professional liquidity providers (Market-Makers) is, and has been, commonly practiced in the options markets. As such, marketing fee programs,⁸ and customer posting incentive programs,⁹ are based on attracting public customer order flow. The practice of providing additional incentives to increase order flow in high volume symbols is, and has been, commonly practiced in the options markets.¹⁰ The Program similarly

2013), 78 FR 75629 (December 12, 2013) (SR-MIA X-2013-56).

⁸ See MIA X Fee Schedule, Section 1(b).

⁹ See NYSE Arca, Inc. Fees Schedule, page 4 (section titled "Customer Monthly Posting Credit Tiers and Qualifications for Executions in Penny Pilot Issues").

¹⁰ See International Securities Exchange, LLC, Schedule of Fees, p. 6 (providing reduced fee rates

intends to attract Priority Customer order flow, which will increase liquidity, thereby providing greater trading opportunities and tighter spreads for other market participants and causing a corresponding increase in order flow from such other market participants in these select symbols. Increasing the number of orders sent to the Exchange will in turn provide tighter and more liquid markets, and therefore attract more business overall.

The credits paid out as part of the program will be drawn from the general revenues of the Exchange.¹¹ The Exchange calculates volume thresholds on a monthly basis.

The Exchange proposes to implement the new transaction fees beginning June 2, 2014.

2. Statutory Basis

The Exchange believes that its proposal to amend its fee schedule is consistent with Section 6(b) of the Act¹² in general, and furthers the objectives of Section 6(b)(4) of the Act¹³ in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members.

The Exchange believes that the proposed Priority Customer Rebate Program is fair, equitable and not unreasonably discriminatory. The Program is reasonably designed because it will incent providers of Priority Customer order flow to send that Priority Customer order flow to the Exchange in order to receive a credit in a manner that enables the Exchange to improve its overall competitiveness and strengthen its market quality for all market participants. The proposal to increase the incentives in the high volume select symbols is also reasonably designed to increase the competitiveness of the Exchange with other options exchanges that also offer increased incentives to higher volume symbols. The proposed rebate program is fair and equitable and not unreasonably discriminatory because it will apply equally to all Priority Customer orders in the select symbols. All similarly situated Priority Customer orders in the select symbols are subject

for order flow in Select Symbols); NASDAQ OMX PHLX, Pricing Schedule, Section I (providing a rebate for adding liquidity in SPY); NYSE Arca, Inc. Fees Schedule, page 4 (section titled "Customer Monthly Posting Credit Tiers and Qualifications for Executions in Penny Pilot Issues").

¹¹ Despite providing credits under the Program, the Exchange represents that it will continue to have adequate resources to fund its regulatory program and fulfill its responsibilities as a self-regulatory organization while the Program will be in effect.

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(4).

to the same rebate schedule, and access to the Exchange is offered on terms that are not unfairly discriminatory. In addition, the Program is equitable and not unfairly discriminatory because, while only Priority Customer order flow qualifies for the Program, an increase in Priority Customer order flow will bring greater volume and liquidity, which benefit all market participants by providing more trading opportunities and tighter spreads.

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. The Exchange believes that the proposed change would increase both intermarket and intramarket competition by incenting Members to direct their Priority Customer orders in the select symbols to the Exchange, which will enhance the quality of quoting and increase the volume of contracts traded here in those symbols. To the extent that there is additional competitive burden on non-Priority Customers or trading in non-select symbols, the Exchange believes that this is appropriate because the proposed changes to the rebate program should incent Members to direct additional order flow to the Exchange and thus provide additional liquidity that enhances the quality of its markets and increases the volume of contracts traded here in those symbols. To the extent that this purpose is achieved, all the Exchange's market participants should benefit from the improved market liquidity in such select symbols. Enhanced market quality and increased transaction volume that results from the anticipated increase in order flow directed to the Exchange will benefit all market participants and improve competition on the Exchange in such select symbols. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange. The Exchange believes that the proposed rule change reflects this competitive environment because it reduces the Exchange's fees in a manner that encourages market participants to direct their customer order flow, to provide liquidity, and to attract additional transaction volume to the Exchange. Given the robust competition

for volume among options markets, many of which offer the same products, implementing a volume based customer rebate program to attract order flow like the one being proposed in this filing is consistent with the above-mentioned goals of the Act. This is especially true for the smaller options markets, such as MIAX, which is competing for volume with much larger exchanges that dominate the options trading industry. As a new exchange, MIAX has a nominal percentage of the average daily trading volume in options, so it is unlikely that the customer rebate program could cause any competitive harm to the options market or to market participants. Rather, the customer rebate program is a modest attempt by a small options market to attract order volume away from larger competitors by adopting an innovative pricing strategy. The Exchange notes that if the rebate program resulted in a modest percentage increase in the average daily trading volume in options executing on MIAX, while such percentage would represent a large volume increase for MIAX, it would represent a minimal reduction in volume of its larger competitors in the industry. The Exchange believes that the proposal will help further competition, because market participants will have yet another additional option in determining where to execute orders and post liquidity if they factor the benefits of a customer rebate program into the determination.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.¹⁴ 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.

¹⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2014-26 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR-MIAX-2014-26. 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 Web site (<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 Web site 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MIAX-2014-26 and should be submitted on or before July 7, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Kevin M. O'Neill,
Deputy Secretary.

[FR Doc. 2014-13931 Filed 6-13-14; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-72359; File No. SR-ISE-2014-10]

Self-Regulatory Organizations; International Securities Exchange, LLC; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change Related to Limiting Certain Types of Complex Orders From Legging Into the Regular Market

June 10, 2014.

I. Introduction

On February 25, 2014, the International Securities Exchange, LLC (the "Exchange" or "ISE") filed with the Securities and Exchange Commission (the "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change relating to complex orders. The proposed rule change was published for comment in the *Federal Register* on March 14, 2014.³ The Commission received no comment letters. On April 23, 2014, the Commission extended the time period in which to either approve the proposal, disapprove the proposal, or to institute proceedings to determine whether to approve or disapprove the proposal, to June 12, 2014.⁴ This order institutes proceedings under Section 19(b)(2)(B) of the Act⁵ to determine whether to approve or disapprove the proposal.

II. Description of the Proposal

The Exchange proposes to amend ISE Rule 722 to prohibit certain types of complex orders from legging into the regular market (*i.e.*, executing against individual quotes for each of the legs of the complex order in the regular market).⁶ Specifically, ISE proposes that

complex orders with two option legs where both legs are buying or both legs are selling and both legs are calls or both legs are puts will only trade against other complex orders in the complex order book and will not be permitted to leg into the regular market.⁷ ISE also proposes that complex orders with three option legs where all legs are buying or all legs are selling, regardless of whether the options are a calls or puts, will only trade against other complex orders in the complex order book and will not be permitted to leg into the regular market.⁸ ISE describes these types of two and three leg complex order strategies as "atypical" complex order strategies in that they are geared toward an aggressive directional capture of volatility.⁹

The Exchange further proposes to amend ISE Rule 722 to prevent legging orders¹⁰ from being generated on behalf of the two-legged complex orders where both legs are buying or both legs are selling and both legs are calls or both legs are puts.¹¹ According to the Exchange, preventing the generation of legging orders for these types of two-legged complex orders is necessary to effectuate the proposed limitation to exclude these types of complex orders from trading in the regular market.¹²

In addition, the Exchange proposes to amend Supplemental Material .08 to Rule 716 (Facilitation Mechanism and

legs) will be automatically executed against bids and offers on the Exchange for the individual legs of the complex order provided the complex order can be executed while maintaining a permissible ratio by such bids and offers.

⁷ See Notice, *supra* note 3, at 14564. The Exchange offers some examples of such strategies as follows: (i) Buy Call 1, Buy Call 2; (ii) Sell Call 1, Sell Call 2; (iii) Buy Put 1, Buy Put 2; (iv) Sell Put 1, Sell Put 2. See *id.*

⁸ See *id.* The Exchange offers some examples of such strategies as follows: (i) Buy Call 1, Buy Call 2, Buy Put 1; (ii) Buy Put 1, Buy Put 2, Buy Put 3; (iii) Buy Call 1, Buy Call 2, Buy Call 3; (iv) Buy Put 1, Buy Put 2, Buy Call 3; (v) Sell Put 1, Sell Put 2, Sell Call 1. See *id.*

⁹ See *id.* Hereinafter these two and three legged complex order strategies that are the subject of this proposal will be referred to as "directional complex orders." ISE states that most traditional complex order strategies used by retail or professional investors, unlike directional complex orders, seek to hedge the potential move of the underlying security or to capture a premium from an anticipated market event. See *id.*

¹⁰ ISE Rule 715(k) defines a legging order as a limit order on the regular limit order book that represents one side of a complex order that is to buy or sell an equal quantity of two options series resting on the Exchange's complex order book.

¹¹ See Notice, *supra* note 3, at 14565. The Exchange notes that legging orders cannot be generated for complex orders with three options legs, and, therefore, is not proposing to prevent the generation of legging orders for complex orders with three option legs where all legs are buying or all legs are selling, regardless of whether the options are calls or puts. See *id.*

¹² See *id.*

Solicited Order Mechanism) and Supplemental Material .10 to Rule 723 (Price Improvement Mechanism) to ensure that directional complex orders do not leg into the regular market through an auction.¹³ ISE represents that, under its current rules, if an improved net price for a complex order in the Exchange's auctions can be achieved from bids and offers for the individual legs of the complex order in the regular market, the complex order would receive that better net price.¹⁴ ISE proposes to prevent directional complex orders from interacting with the regular market during an auction in connection with the Exchange's proposal in order to prevent directional complex orders from executing against the regular market.¹⁵ Accordingly, the Exchange proposes to amend Supplemental Material .08 to Rule 716 and Supplemental Material .10 to Rule 723 to provide that if an improved net price can be achieved from bids and offers for the individual legs for directional complex orders during an auction, ISE will cancel the auction at the end of the auction's exposure period.¹⁶

According to the Exchange, the proposed rule amendments are designed to prevent directional complex orders from bypassing the Exchange's market maker risk parameters for the regular market.¹⁷ ISE states that the market maker risk parameters are designed to automatically remove a market maker's quotes in all series of an options class when any of four parameter settings established by the market maker are triggered.¹⁸ ISE describes these market maker risk parameters as a functionality that allows market makers to provide liquidity across many different options series without being at risk of executing the full cumulative size of all of their quotes before being given adequate opportunity to adjust their quotes.¹⁹ According to ISE, when a complex order legs into the regular market, all of the legs of a complex order are considered as a single transaction for purposes of the market maker risk parameters, and not as a series of individual transactions.²⁰ Thus, the trading system performs the market maker risk parameter calculations after the entire

¹³ See *id.*

¹⁴ See *id.*

¹⁵ See Notice, *supra* note 3, at 14565.

¹⁶ See *id.*

¹⁷ See *id.* at 14564 and ISE Rule 804(g) (Automated Quotation Adjustments). See also Supplemental Material .04 to ISE Rule 722 (Automated Spread Quotation Adjustments).

¹⁸ See Notice, *supra* note 3, at 14564.

¹⁹ See *id.*

²⁰ See *id.*

¹⁵ 17 CFR 200.30-3(a)(12).

¹⁶ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 71669 (March 10, 2014), 79 FR 14563 ("Notice").

⁴ See Securities Exchange Act Release No. 72006 (April 23, 2014), 79 FR 24031 (April 29, 2014).

⁵ 15 U.S.C. 78s(b)(2)(B).

⁶ See Notice, *supra* note 3, at 14564. ISE Rule 722(b)(3)(ii) rule states that complex orders up to a maximum number of legs (determined by the Exchange on a class basis as either two legs or three