

Required fields are shown with yellow backgrounds and asterisks.

Filing by Nasdaq ISE, LLC  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial *	Amendment *	Withdrawal	Section 19(b)(2) *	Section 19(b)(3)(A) *	Section 19(b)(3)(B) *
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
			Rule		
Pilot	Extension of Time Period for Commission Action *	Date Expires *	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>	<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input checked="" type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) *	Section 806(e)(2) *
<input type="checkbox"/>	<input type="checkbox"/>
	Section 3C(b)(2) *
	<input type="checkbox"/>

Exhibit 2 Sent As Paper Document	Exhibit 3 Sent As Paper Document
<input type="checkbox"/>	<input type="checkbox"/>

**Description**

Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

A proposal to amend Options 2 Section 4, Options 4 Section 3, Options 4 Section 8, and Options 4A Section 12.

**Contact Information**

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name \*  Last Name \*   
Title \*   
E-mail \*   
Telephone \*  Fax

**Signature**

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title \*)

Date    
By    
(Name \*)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

**Form 19b-4 Information \***

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) Nasdaq ISE, LLC (“ISE” or “Exchange”), 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> is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to amend Options 2, Section 4, Obligations of Market Makers; Options 4, Section 3, Criteria for Underlying Securities; Options 4, Section 8, Long-Term Options Contracts; and Options 4A, Section 12, Terms of Index Options Contracts.

A notice of the proposed rule change for publication in the Federal Register is attached as Exhibit 1. The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors of the Exchange (the “Board”) on November 5, 2020. Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

Questions and comments on the proposed rule change may be directed to:

Angela Saccomandi Dunn  
Principal Associate General Counsel  
Nasdaq, Inc.  
215-496-5692

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

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

3. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

a. Purpose

The Exchange proposes to amend Options 2, Section 4, Obligations of Market Makers; Options 4, Section 3, Criteria for Underlying Securities; Options 4, Section 8, Long-Term Options Contracts; and Options 4A, Section 12, Terms of Index Options Contracts. Each change will be described below.

Options 2, Section 4(a)

The Exchange proposes to remove the following rule text from Options 2, Section 4(a), which has been in place since ISE’s inception:<sup>3</sup>

...Ordinarily, Market Makers are expected to:

(1) Refrain from purchasing a call option or a put option at a price more than \$0.25 below parity, although a larger amount may be appropriate considering the particular market conditions. In the case of calls, parity is measured by the bid in the underlying security, and in the case of puts, parity is measured by the offer in the underlying security.

(2) The \$0.25 amount above may be increased, or the provisions of this Rule may be waived, by the Exchange on a series-by-series basis.

This proposed rule text also previously existed on Cboe Exchange, Inc. within prior Rule 8.7<sup>4</sup> and was removed from Cboe’s Rulebook in 2019.<sup>5</sup> The Exchange likewise desires

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<sup>3</sup> See Securities Exchange Act Release No. 42455 (February 24, 2000), 65 FR 11388 (March 2, 2000) (In the Matter of the Application of The International Securities Exchange LLC for Registration as a National Securities Exchange; Findings and Opinion of the Commission).

<sup>4</sup> Prior Interpretation and Policy .02 to Rule 8.7 provided, “Market-Makers are expected ordinarily to refrain from purchasing a call option or a put option at a price more than \$0.25 below parity, although a larger amount may be appropriate considering the particular market conditions. In the case of calls, parity is measured by the bid in the underlying security, and in the case of puts, parity is measured by the offer in the underlying security. The \$0.25 amount above may be

to remove this restriction on Market Makers which does not exist on Cboe or other Nasdaq affiliated markets.<sup>6</sup> The proposed rule text is currently waived on ISE pursuant to Options 2, Section 4(a)(2). The Exchange proposes to remove this rule text from Options 2, Section 4 as the Exchange does not desire to enforce this provision in the future. The Exchange believes that this market maker provision is no longer necessary. Today, ISE incentivizes Market Makers through pricing<sup>7</sup> and allocation<sup>8</sup> to quote tightly in their assigned options series. Primary Market Makers and Competitive Market Makers also have other obligations with respect to market making<sup>9</sup> in addition to other quoting

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increased, or the provisions of this Interpretation may be waived, by the Exchange on a series-by-series basis.”

- <sup>5</sup> Cboe’s rule change merely noted, with respect to the removal of Cboe’s parity rule, that the filing makes non-substantive changes to the rule governing a Market-Maker’s general obligations (current Rule 8.7, in part), most of which remove redundant provisions that are already covered under the umbrella of a Market-Maker’s obligation to engage in dealing to maintain fair and orderly markets. No specific argument is provided with respect to removing this provision. See Securities Exchange Act 87024 (September 19, 2019), 84 FR 50545 (September 25, 2019) (SR-CBOE-2019-059) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Certain Rules Relating To Market-Makers Upon Migration to the Trading System Used by Cboe Affiliated Exchanges).
- <sup>6</sup> See Nasdaq Phlx LLC, The Nasdaq Options Market LLC and Nasdaq BX, Inc. at Options 2, Section 4 (Obligations of Market Makers).
- <sup>7</sup> See Options 7 (Option Pricing). ISE offers lower fees and rebates to Market Makers based on the percentage of time spent on the National Best Bid or National Best Offer ("NBBO") for certain qualifying series.
- <sup>8</sup> See Options 3, Section 10 (Priority of Quotes and Orders). Primary Market Makers are offered an enhanced allocation provided the Primary Market Maker is quoting at same price as a non- Priority Customer Order or Market Maker quote.
- <sup>9</sup> See Options 2, Section 4. ISE Market Makers must for example: (1) compete with other Market Makers to improve the market in all series of options classes to which the Market Maker is appointed; (2) make markets that, absent changed market conditions, will be honored for the number of contracts entered into the

obligations<sup>10</sup> that they must abide by when quoting on ISE. Also, since the adoption of the rule, the Exchange has adopted the obvious error rule<sup>11</sup> which permits the Exchange to review a transaction as potentially erroneous based on a theoretical price. Also, ISE orders are subject to trade-through compliance, thereby limiting the prices at which orders may execute.<sup>12</sup> Market Makers are relied upon to provide liquidity on ISE, which benefits other Members who have an opportunity to interact with the order flow. The Exchange believes that the obligation to refrain from purchasing a call option or a put option at a price more than \$0.25 below parity places yet another obligation on ISE Market Makers that is not required on Cboe or other Nasdaq markets. The Exchange believes that this additional obligation is not necessary to maintain fair and orderly markets and notes the Exchange has waived this obligation.

#### Bid/Ask Differentials

The Exchange proposes to amend Options 2, Section 4(b)(4) and Options 4A, Section 12(b)(i) to relocate text concerning bid/ask differentials for long-term option series. Currently, Options 4, Section 8(a) describes the bid/ask differentials for long-term

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Exchange's System in all series of options classes to which the Market Maker is appointed; (3) update market quotations in response to changed market conditions in all series of options classes to which the Market Maker is appointed; and (4) price options contracts fairly by, among other things, bidding and offering so as to create differences of no more than \$5 between the bid and offer following the opening rotation in an equity or index options contract. See Options 2, Section 4(b).

<sup>10</sup> See Options 2, Section 5 (Electronic Market Maker Obligations and Quoting Requirements). Further, Options 3, Section 8(c)(3) requires Primary Market Makers to submit a Valid Width Quote during the Opening Process.

<sup>11</sup> See Options 3, Section 20 (Nullification and Adjustment of Options Transactions including Obvious Errors).

<sup>12</sup> See Options 3, Section 4(b)(6).

options series for equity options and exchange-traded products and Options 4A, Section 12(b)(i) describes the bid/ask differentials for long-term options series for indexes. Currently, the bid/ask differentials shall not apply to any options series until the time to expiration is less than nine (9) months for equity options and exchange-traded funds as provided for within Options 4, Section 8(a). Currently, bid/ask differentials shall not apply to any options series until the time to expiration is less than twelve (12) months for index options as provided for within Options 4A, Section 12(b)(i).

The Exchange proposes to centralize the bid/ask differentials within new Options 2, Section 4(b)(4)(iii) and add a sentence to both Options 4, Section 8(a) and Options 4A, Section 12(b)(i) that cites to Options 2, Section 4(b)(4)(iii) for information on bid/ask differentials for the various products. The Exchange believes that this relocation will provide Primary Market Makers and Competitive Market Makers with centralized information regarding their bid/ask differential requirements. The Exchange is not amending the bid/ask differentials; the rule text is simply being relocated.

#### Business Continuity and Disaster Recovery Plan

The Exchange proposes to relocate Supplementary Material .02 to Options 2, Section 4, concerning business continuity and disaster recovery plans, to General 2, Section 12, which is currently reserved. The Exchange proposes to title General 2, Section 12 as “Business Continuity and Disaster Recovery Plan Testing Requirements for Members Pursuant to Regulation SCI.” The rule text is being relocated without change. The Exchange proposes to relocate this rule text to harmonize ISE’s rules with that of Nasdaq PHLX LLC (“Phlx”), Nasdaq BX, Inc. and The Nasdaq Stock Market LLC which all have business continuity and disaster recovery plans located within General 2,

Section 12 of their respective rulebooks.<sup>13</sup> The Exchange also proposes to reserve Sections 7-10 and 13-22 within General 2.<sup>14</sup> Harmonizing the rule locations of the rules of the Nasdaq affiliated markets will make it easier for market participants to review and compare the rules of each Nasdaq market.

#### Options 4, Section 3

The Exchange proposes to remove the following products from Options 4, Section 3(h): the ETFs Silver Trust, the ETFs Palladium Trust, the ETFs Platinum Trust or the Sprott Physical Gold Trust. The Exchange no longer lists these products and proposes to remove them the products from its listing rules. The Exchange will file a proposal with the Commission if it determines to list these products in the future.

The Exchange proposes to amend Options 4, Section 3(h) by removing the rule text at the end of the paragraph which provides, “all of the following conditions are met.” Paragraph (h) would simply end with “provided that:” and direct market participants to subparagraphs (1) and (2). The Exchange also proposes to capitalize “the” at the beginning of Options 4, Section 3(h)(1) and remove “; and” at the end of the paragraph and instead at a period so that subparagraphs (1) and (2) are not linked, but rather read independently. Today, Options 4, Section 3(h)(1) applies to all Exchange-Traded Fund Shares. The Exchange proposes to clarify that Options 4, Section 3(h)(2) applies to only international or global Exchange-Traded Fund Shares. Specifically, the Exchange proposes to amend Options 4, Section 3(h)(2) to provide, “Exchange-Traded Fund Shares

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<sup>13</sup> Similar rule changes will also be made for Nasdaq GEMX, LLC and Nasdaq MRX, LLC.

<sup>14</sup> General 2, Sections 5 and 6 are currently reserved. These sections are proposed to be deleted. The proposed text would instead reflect General 2, Sections 5-10 are reserved.

based on international or global indexes, or portfolios that include non-U.S. securities, shall meet the following criteria.” Phlx Options 4, Section 3(h) currently has similar rule text.<sup>15</sup> Proposed Options 4, Sections 3(h) generally concerns securities deemed appropriate for options trading. The proposed new rule text adds language stating that subparagraph (h)(2) of Options 4, Section 3 applies to the extent the Exchange-Traded Fund Share is based on international or global indexes, or portfolios that include non-U.S. securities. This language is intended to serve as a guidepost and clarify that (1) subparagraph (h)(2) does not apply to an Exchange-Traded Fund Shares based on a U.S. domestic index or portfolio, and (2) subparagraph (h)(2) includes Exchange-Traded Fund Shares that track a portfolio and do not track an index.

The Exchange proposes to amend Options 4, Section 3(h)(2)(A) to remove the phrase “for series of portfolio depositary receipts and index fund shares based on international or global indexes,”. Today, Options 4, Section 3(h), subparagraphs (h)(1)<sup>16</sup>

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<sup>15</sup> Phlx will also file to conform its rule text to the proposed text within Options 4, Section 3(h)(2).

<sup>16</sup> Subsection (h)(i) concerns passive Exchange-Traded Fund Shares. Subsection (h)(1) provides, “represent interests in registered investment companies (or series thereof) organized as open-end management investment companies, unit investment trusts or similar entities that hold portfolios of securities and/or financial instruments, including, but not limited to, stock index futures contracts, options on futures, options on securities and indices, equity caps, collars and floors, swap agreements, forward contracts, repurchase agreements and reverse repurchase agreements (the "Financial Instruments"), and money market instruments, including, but not limited to, U.S. government securities and repurchase agreements (the "Money Market Instruments") comprising or otherwise based on or representing investments in broad-based indexes or portfolios of securities and/or Financial Instruments and Money Market Instruments (or that hold securities in one or more other registered investment companies that themselves hold such portfolios of securities and/or Financial Instruments and Money Market Instruments).”

and (h)(v)<sup>17</sup> permit the Exchange to list options on Exchange-Traded Fund Shares based on generic listing standards for portfolio depositary receipts and index fund shares without applying component based requirements in subparagraphs (h)(2)(B) – (D). By removing the proposed rule text, the Exchange would make clear that subparagraph (h)(2)(A) applies to Exchange-Traded Fund Shares based on international or global indexes, or portfolios that include non-U.S. securities, that are listed pursuant to generic listing standards and comply with Options 4, Section 3(h) and subparagraph (h)(1).

The Exchange also proposes to amend the term “comprehensive surveillance agreement” within Options 4, Section 3(h)(2) (A) – (D) to instead provide “comprehensive surveillance sharing agreement.” This amendment will bring greater clarity to the term.

Further, the Exchange proposes to add the phrase “if not available or applicable, the Exchange-Traded Fund’s” within Options 4, Section 3(h)(2)(B), (C), and (D) to clarify that when component securities are not available, the portfolio of securities upon which the Exchange-Traded Fund Share is based can be used instead. The Exchange notes that “not available” is intended for cases where the Exchange does not have access to the index components, in those cases the Exchange would look to the portfolio

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<sup>17</sup> Subsection (h)(v) concerns active Exchange-Traded Fund Shares. Subsection (h)(v) Provides, “represents an interest in a registered investment company (“Investment Company”) organized as an open-end management company or similar entity, that invests in a portfolio of securities selected by the Investment Company’s investment adviser consistent with the Investment Company’s investment objectives and policies, which is issued in a specified aggregate minimum number in return for a deposit of a specified portfolio of securities and/or a cash amount with a value equal to the next determined net asset value (“NAV”), and when aggregated in the same specified minimum number, may be redeemed at a holder’s request, which holder will be paid a specified portfolio of securities and/or cash with a value equal to the next determined NAV (“Managed Fund Share”).

components. The term “not applicable” is intended if the fund is active and does not track an index and only the portfolio is available. As noted above, this rule text currently exists within Phlx Options 4, Section 3(h).

The Exchange also proposes to wordsmith Options 4, Section 3(h)(2)(B) to amend the phrase to provide, “any non-U.S. component securities of an index on which the Exchange-Traded Fund Shares are based or if not available or applicable, the Exchange-Traded Fund’s portfolio of securities that are not subject to comprehensive surveillance sharing agreements do not in the aggregate represent more than 50% of the weight of the index or portfolio;”. The Exchange believes that the revised wording will bring greater clarity to the rule text.

Similarly, the Exchange proposes to wordsmith Options 4, Section 3(h)(2)(C) and (D) to relocate the phrase “on which the Exchange-Traded Fund Shares are based” and add “or portfolio” to bring greater clarity to the rule text by conforming the rule text of (C) and (D) to the language within (B).

#### Technical Amendments

The Exchange proposes a non-substantive technical amendment to Options 4, Section 3(C)(2)(A)(ii) to correct a typographical error by changing a “than” to a “that”. The Exchange proposes a non-substantive technical amendment to Options 4, Section 3(g)(2) to capitalize “section”. The Exchange proposes a non-substantive technical amendment to Options 4, Section 3(h)(1) to change “In” to “in”.

Finally, the Exchange proposes to add new Options 4C and mark it as reserved. Phlx added a 4C to its Rulebook and this rule change will harmonize ISE's Rulebook structure to Phlx's Rulebook Structure.<sup>18</sup>

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>19</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>20</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

Options 2, Section 4(a)

The Exchange's proposal to remove certain rule text from Options 2, Section 4(a) that refrains Market Makers from purchasing a call option or a put option at a price more than \$0.25 below parity is consistent with the Act. The Exchange desires to remove this restriction on Market Makers which does not exist on Cboe or other Nasdaq affiliated markets.<sup>21</sup> The proposed rule text is currently waived on ISE pursuant to Options 2, Section 4(a)(2). The Exchange believes that this market maker provision is no longer necessary. Today, ISE incentivizes Market Makers through pricing<sup>22</sup> and allocation<sup>23</sup> to

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<sup>18</sup> See Securities Exchange Act Release No. 91488 (April 6, 2021), 86 FR 19037 (April 12, 2021) (SR-Phlx-2021-14) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Phlx Options Rules at Options 4 Under the Options 4 Title in the Exchanges Rulebooks Shell Structure).

<sup>19</sup> 15 U.S.C. 78f(b).

<sup>20</sup> 15 U.S.C. 78f(b)(5).

<sup>21</sup> See supra note 5.

<sup>22</sup> See supra note 7.

quote tightly in their assigned options series. Primary Market Makers and Competitive Market Makers also have other obligations with respect to market making<sup>24</sup> in addition to other quoting obligations<sup>25</sup> that they must abide by when quoting on ISE. Also, since the adoption of the rule, the Exchange has adopted the obvious error rule<sup>26</sup> which permits the Exchange to review a transaction as potentially erroneous based on a theoretical price. Also, ISE orders are subject to trade-through compliance, thereby limiting the prices at which orders may execute.<sup>27</sup> Market Makers are relied upon to provide liquidity on ISE, which benefits other Members who have an opportunity to interact with the order flow. The Exchange believes that the obligation to refrain from purchasing a call option or a put option at a price more than \$0.25 below parity places yet another obligation on ISE Market Makers that is not required on Cboe or other Nasdaq markets. The Exchange believes that this additional obligation is not necessary to maintain fair and orderly markets and notes the Exchange has waived this obligation and the removal of this provision would remove an impediment to and perfect the mechanism of a free and open market and a national market system.

#### Bid/Ask Differentials

The Exchange's proposal to amend Options 2, Section 4(b)(4) and Options 4A, Section 12(b)(i) to relocate text concerning bid/ask differentials for long-term option

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<sup>23</sup> See supra note 8.

<sup>24</sup> See supra note 9.

<sup>25</sup> See supra note 10.

<sup>26</sup> See supra note 11.

<sup>27</sup> See supra note 12.

series is consistent with the Act. The Exchange's proposal will centralize the bid/ask differentials within new Options 2, Section 4(b)(4)(iii) and add a sentence to both Options 4, Section 8(a) and Options 4A, Section 12(b)(i) that cites to Options 2, Section 4(b)(4)(iii) for information on bid/ask differentials for the various products. The Exchange is not amending the bid/ask differentials; the rule text is simply being relocated. The Exchange believes that this relocation will provide Primary Market Makers and Competitive Market Makers with centralized information regarding their bid/ask differential requirements.

#### Business Continuity and Disaster Recovery Plan

The Exchange's proposal to relocate Supplementary Material .02 to Options 2, Section 4, concerning business continuity and disaster recovery plans, to General 2, Section 12, which is currently reserved, is consistent with the Act. This rule text will harmonize ISE's rules with that of Phlx, Nasdaq BX, Inc. and The Nasdaq Stock Market LLC which all have business continuity and disaster recovery plans located within General 2, Section 12 of their respective rulebooks.<sup>28</sup> Harmonizing the rule locations of the rules of the Nasdaq affiliated markets will make it easier for market participants to review and compare the rules of each Nasdaq market. The Exchange also proposes to reserve Sections 7-10 and 13-22 within General 2. These changes are non-substantive as the rule text is not being amended.

#### Options 4, Section 3

The Exchange's proposal to remove the following products from Options 4, Section 3(h): the ETFs Silver Trust, the ETFs Palladium Trust, the ETFs Platinum Trust

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<sup>28</sup> See supra note 13.

or the Sprott Physical Gold Trust is consistent with the Act because the Exchange no longer lists these products and proposes to remove them the products from its listing rules. The Exchange will file a proposal with the Commission if it determines to list these products in the future.

The Exchange's proposal to amend Options 4, Section 3(h) by removing the rule text at the end of the paragraph which provides, "all of the following conditions are met," and creating separate paragraphs for Options 4, Section 3(h)(1) and (2) is consistent with the Act. These amendments will de-link these subparagraphs so they are read independently. Today, Options 4, Section 3(h)(1) applies to all Exchange-Traded Fund Shares. The Exchange's proposal to clarify that Options 4, Section 3(h)(2) applies to only international or global indexes or portfolios that include non-U.S. securities will bring greater clarity to the qualification standards for listing options on Exchange-Traded Fund Shares. Phlx Options 4, Section 3(h) currently has similar rule text.<sup>29</sup> Proposed Options 4, Sections 3(h) generally concerns securities deemed appropriate for options trading. The proposed new rule text adds language stating that subparagraph (h)(2) of Options 4, Section 3 applies to the extent the Exchange-Traded Fund Share is based on international or global indexes or portfolios that include non-U.S. securities. This language is intended to serve as a guidepost and clarify that (1) subparagraph (h)(2) does not apply to an Exchange-Traded Fund Shares based on a U.S. domestic index or portfolio, and (2) subparagraph (h)(2) includes Exchange-Traded Fund Shares that track a portfolio and do not track an index.

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<sup>29</sup> Phlx will also file to conform its rule text to the proposed text within Options 4, Section 3(h)(2).

The Exchange’s proposal to amend Options 4, Section 3(h)(2)(A) to remove the phrase “for series of portfolio depositary receipts and index fund shares based on international or global indexes,” is consistent with the Act. Today, Options 4, Section 3(h), subparagraphs (h)(1)<sup>30</sup> and (h)(v)<sup>31</sup> permit the Exchange to list options on Exchange-Traded Fund Shares based on generic listing standards for portfolio depositary receipts and index fund shares without applying component based requirements in subparagraphs (h)(2)(B) – (D). By removing the proposed rule text, the Exchange would make clear that subparagraph (h)(2)(A) applies to Exchange-Traded Fund Shares based on international or global indexes, or portfolios that include non-U.S. securities, that are listed pursuant to generic listing standards and comply with Options 4, Section 3(h) and subparagraph (h)(1).

The Exchange’s proposal to amend the term “comprehensive surveillance agreement” within Options 4, Section 3(h)(2) (A) – (D) to instead provide “comprehensive surveillance sharing agreement” is consistent with the Act as the amendment will bring greater clarity to the term.

The Exchange’s proposal to add the phrase “if not available or applicable, the Exchange-Traded Fund’s” to Options 4, Section 3(h)(2)(B), (C), and (D) is consistent with the Act as it will clarify that when component securities are not available, the portfolio of securities upon which the Exchange-Traded Fund Share is based can be used instead. This rule text currently exists within Phlx Options 4, Section 3(h).

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<sup>30</sup> See supra note 16.

<sup>31</sup> See supra note 17.

The Exchange's proposal to amend and relocate the rule text within Options 4, Section 3(h)(2)(B), (C), and (D) will bring greater clarity to the current rule text by explicitly providing that the index being referenced is the one on which the Exchange-Traded Fund Shares is based. Also, adding "or portfolio" to Options 4, Section 3(h)(2)(C), and (D) will bring greater clarity to the rule text by conforming the rule text of (C) and (D) to the language within (B).

#### Technical Amendments

The Exchange's proposal to make certain non-substantive technical amendment to Options 4, Section 3(C)(2)(A)(ii), Options 4, Section 3(g)(2) and Options 4, Section 3(h)(1) are consistent with the Act. Also, adding Options 4C and reserving it within the rules is a non-substantive amendment which will harmonize ISE's Rulebook structure to Phlx's Rulebook Structure.<sup>32</sup>

#### 4. 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.

#### Options 2, Section 4(a)

The Exchange's proposal to remove certain rule text from Options 2, Section 4(a) that refrains Market Makers from purchasing a call option or a put option at a price more than \$0.25 below parity does not impose an undue burden on competition. The Exchange desires to remove this restriction on Market Makers which does not exist on Cboe or

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<sup>32</sup>

See supra note 18.

other Nasdaq affiliated markets.<sup>33</sup> The proposed rule text is currently waived on ISE pursuant to Options 2, Section 4(a)(2). Market Makers are relied upon to provide liquidity on ISE, which benefits other Members who have an opportunity to interact with the order flow. The Exchange believes that the obligation to refrain from purchasing a call option or a put option at a price more than \$0.25 below parity places yet another obligation on ISE Market Makers that is not required on Cboe or other Nasdaq markets. The Exchange believes that this additional obligation is not necessary to maintain fair and orderly markets and notes the Exchange has waived this obligation.

#### Bid/Ask Differentials

The Exchange's proposal to amend Options 2, Section 4(b)(4) and Options 4A, Section 12(b)(i) to relocate text concerning bid/ask differentials for long-term option series does not impose an undue burden on competition. The Exchange's proposal will centralize the bid/ask differentials within new Options 2, Section 4(b)(4)(iii) and add a sentence to both Options 4, Section 8(a) and Options 4A, Section 12(b)(i) that cites to Options 2, Section 4(b)(4)(iii) for information on bid/ask differentials for the various products. The Exchange believes that this relocation will provide Primary Market Makers and Competitive Market Makers with centralized information regarding their bid/ask differential requirements.

#### Business Continuity and Disaster Recovery Plan

The Exchange's proposal to relocate Supplementary Material .02 to Options 2, Section 4, concerning business continuity and disaster recovery plans, to General 2, Section 12, which is currently reserved, does not impose an undue burden on

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<sup>33</sup>

See supra note 5.

competition. This rule text will harmonize ISE's rules with that of Phlx, Nasdaq BX, Inc. and The Nasdaq Stock Market LLC which all have business continuity and disaster recovery plans located within General 2, Section 12 of their respective rulebooks.<sup>34</sup>

Harmonizing the rule locations of the rules of the Nasdaq affiliated markets will make it easier for market participants to review and compare the rules of each Nasdaq market.

This change is non-substantive as the rule text is not being amended.

#### Options 4, Section 3

The Exchange's proposal to remove the following products from Options 4, Section 3(h): the ETFs Silver Trust, the ETFs Palladium Trust, the ETFs Platinum Trust or the Sprott Physical Gold Trust does not impose an undue burden on competition because the Exchange no longer lists these products and proposes to remove them the products from its listing rules. No Member will be permitted to trade these products on ISE.

The Exchange's proposal to amend Options 4, Section 3(h) by removing the rule text at the end of the paragraph which provides, "all of the following conditions are met," and creating separate paragraphs for Options 4, Section 3(h)(1) and (2) does not impose an undue burden on competition. These amendments will de-link these subparagraphs so they are read independently. Today, Options 4, Section 3(h)(1) applies to all Exchange-Traded Fund Shares. The Exchange's proposal to clarify that Options 4, Section 3(h)(2) applies to only international or global Exchange-Traded Fund Shares that include non-U.S. securities will bring greater clarity to the qualification standards for listing options on Exchange-Traded Fund Shares. Specifically, this language is intended to serve as a

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<sup>34</sup>

See supra note 13.

guidepost and clarify that (1) subparagraph (h)(2) does not apply to an Exchange-Traded Fund Shares based on a U.S. domestic index or portfolio, and (2) subparagraph (h)(2) includes Exchange-Traded Fund Shares that track a portfolio and do not track an index. This amendment will uniformly apply the criteria within Options 4, Section 3 when it lists options products on ISE.

The Exchange’s proposal to amend Options 4, Section 3(h)(2)(A) to remove the phrase “for series of portfolio depositary receipts and index fund shares based on international or global indexes,” does not impose an undue burden on competition. Today, Options 4, Section 3(h), subparagraphs (h)(1)<sup>35</sup> and (h)(v)<sup>36</sup> permit the Exchange to list options on Exchange-Traded Fund Shares based on generic listing standards for portfolio depositary receipts and index fund shares without applying component based requirements in subparagraphs (h)(2)(B) – (D). By removing the proposed rule text, the Exchange would make clear that subparagraph (h)(2)(A) applies to Exchange-Traded Fund Shares based on international or global indexes, or portfolios that include non-U.S. securities, that are listed pursuant to generic listing standards and comply with Options 4, Section 3(h) and subparagraph (h)(1). This amendment will uniformly apply the criteria within Options 4, Section 3 when it lists options products on ISE.

The Exchange’s proposal to amend the term “comprehensive surveillance agreement” within Options 4, Section 3(h)(2) (A) – (D) to instead provide “comprehensive surveillance sharing agreement” does not impose an undue burden on competition as the amendment will bring greater clarity to the term.

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<sup>35</sup> See supra note 16.

<sup>36</sup> See supra note 17.

The Exchange's proposal to add the phrase "if not available or applicable, the Exchange-Traded Fund's" to Options 4, Section 3(h)(2)(B), (C), and (D) does not impose an undue burden on competition as it will clarify that when component securities are not available, the portfolio of securities upon which the Exchange-Traded Fund Share is based can be used instead.

The Exchange's proposal to amend and relocate the rule text within Options 4, Section 3(h)(2)(B), (C), and (D) will bring greater clarity to the current rule text by explicitly providing that the index being referenced is the one on which the Exchange-Traded Fund Shares is based. Also, adding "or portfolio" to Options 4, Section 3(h)(2)(C), and (D) will bring greater clarity to the rule text by conforming the rule text of (C) and (D) to the language within (B).

#### Technical Amendments

The Exchange's proposal to make certain non-substantive technical amendment to Options 4, Section 3(C)(2)(A)(ii), Options 4, Section 3(g)(2) and Options 4, Section 3(h)(1) does no impose an undue burden on competition. Also, adding Options 4C and reserving it within the rules is a non-substantive amendment which will harmonize ISE's Rulebook structure to Phlx's Rulebook Structure.<sup>37</sup>

5. 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.

6. Extension of Time Period for Commission Action

Not Applicable.

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<sup>37</sup> See supra note 18.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii)<sup>38</sup> of the Act and Rule 19b-4(f)(6) thereunder<sup>39</sup> in that it effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

The Exchange's proposal to remove certain rule text from Options 2, Section 4(a) that refrains Market Makers from purchasing a call option or a put option at a price more than \$0.25 below parity does not significantly affect the protection of investors or the public interest. The Exchange desires to remove this restriction on Market Makers which does not exist on Cboe or other Nasdaq affiliated markets.<sup>40</sup> The proposed rule text is currently waived on ISE pursuant to Options 2, Section 4(a)(2). The Exchange believes that this market maker provision is no longer necessary. Today, ISE incentivizes Market Makers through pricing<sup>41</sup> and allocation<sup>42</sup> to quote tightly in their assigned options series. Primary Market Makers and Competitive Market Makers also have other obligations with

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<sup>38</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>39</sup> 17 CFR 240.19b-4(f)(6).

<sup>40</sup> See supra note 5.

<sup>41</sup> See supra note 7.

<sup>42</sup> See supra note 8.

respect to market making<sup>43</sup> in addition to other quoting obligations<sup>44</sup> that they must abide by when quoting on ISE. Also, since the adoption of the rule, the Exchange has adopted the obvious error rule<sup>45</sup> which permits the Exchange to review a transaction as potentially erroneous based on a theoretical price. Also, ISE orders are subject to trade-through compliance, thereby limiting the prices at which orders may execute.<sup>46</sup> Market Makers are relied upon to provide liquidity on ISE, which benefits other Members who have the opportunity to interact with the order flow. The Exchange believes that this additional obligation is not necessary to maintain fair and orderly markets. The proposal does not impose any significant burden on competition as it would uniformly not apply to any Primary Market Maker or Competitive Market Maker. The Exchange's proposal to amend Options 2, Section 4(b)(4) and Options 4A, Section 12(b)(i) to relocate text concerning bid/ask differentials for long-term option series does not significantly affect the protection of investors or the public interest. The Exchange's proposal will centralize the bid/ask differentials within new Options 2, Section 4(b)(4)(iii) and add a sentence to both Options 4, Section 8(a) and Options 4A, Section 12(b)(i) that cites to Options 2, Section 4(b)(4)(iii) for information on bid/ask differentials for the various products. The Exchange believes that this relocation will provide Primary Market Makers and Competitive Market Makers with centralized information regarding their bid/ask differential requirements. This non-substantive amendment does not impose any

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<sup>43</sup> See supra note 9.

<sup>44</sup> See supra note 10.

<sup>45</sup> See supra note 11.

<sup>46</sup> See supra note 12.

significant burden on competition. The Exchange's proposal to relocate Supplementary Material .02 to Options 2, Section 4, concerning business continuity and disaster recovery plans, to General 2, Section 12, which is currently reserved does not significantly affect the protection of investors or the public interest. This rule text will harmonize ISE's rules with that of Phlx, Nasdaq BX, Inc. and The Nasdaq Stock Market LLC which all have business continuity and disaster recovery plans located within General 2, Section 12 of their respective rulebooks.<sup>47</sup> Harmonizing the rule locations of the rules of the Nasdaq affiliated markets will make it easier for market participants to review and compare the rules of each Nasdaq market. The Exchange also proposes to reserve Sections 7-10 and 13-22 within General 2. These non-substantive amendments do not impose any significant burden on competition. The Exchange's proposal to remove the following products from Options 4, Section 3(h): the ETFS Silver Trust, the ETFS Palladium Trust, the ETFS Platinum Trust or the Sprott Physical Gold Trust does not significantly affect the protection of investors or the public interest because the Exchange no longer lists these products and proposes to remove them the products from its listing rules. This amendment does not impose any significant burden on competition as no Member will be permitted to trade these products on ISE. The Exchange's proposal to amend Options 4, Section 3(h) by creating separate paragraphs for Options 4, Section 3(h)(1) and (2) does not significantly affect the protection of investors or the public interest. These amendments will de-link these subparagraphs so they are read independently. The Exchange's proposal to clarify that Options 4, Section 3(h)(2) applies to only international or global Exchange-Traded Fund Shares that include non-U.S. securities

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<sup>47</sup> See supra note 13.

will bring greater clarity to the qualification standards for listing options on Exchange-Traded Fund Shares. Specifically, this language is intended to serve as a guidepost and clarify that (1) subparagraph (h)(2) does not apply to an Exchange-Traded Fund Shares based on a U.S. domestic index or portfolio, and (2) subparagraph (h)(2) includes Exchange-Traded Fund Shares that track a portfolio and do not track an index. The Exchange's proposal to amend Options 4, Section 3(h)(2)(A) does not significantly affect the protection of investors or the public interest. Today, Options 4, Section 3(h), subparagraphs (h)(1)<sup>48</sup> and (h)(v)<sup>49</sup> permit the Exchange to list options on Exchange-Traded Fund Shares based on generic listing standards for portfolio depositary receipts and index fund shares without applying component based requirements in subparagraphs (h)(2)(B) – (D). By removing the proposed rule text, the Exchange would make clear that subparagraph (h)(2)(A) applies to Exchange-Traded Fund Shares based on international or global indexes, or portfolios that include non-U.S. securities, that are listed pursuant to generic listing standards and comply with Options 4, Section 3(h) and subparagraph (h)(1). The Exchange's proposal to amend the term "comprehensive surveillance agreement" within Options 4, Section 3(h)(2) (A) – (D) to instead provide "comprehensive surveillance sharing agreement" will bring greater clarity to the term. Further, the Exchange's proposal to add the phrase "if not available or applicable, the Exchange-Traded Fund's" to Options 4, Section 3(h)(2)(B), (C), and (D) will clarify that when component securities are not available, the portfolio of securities upon which the Exchange-Traded Fund Share is based can be used instead. The remainder of the

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<sup>48</sup> See supra note 16.

<sup>49</sup> See supra note 17.

amendments are non-substantive conforming and clarifying amendments. This rule text currently exists within Phlx Options 4, Section 3(h) and will bring greater clarity to Phlx's rules. This amendment does not impose any significant burden on competition because the Exchange will uniformly apply the criteria within Options 4, Section 3 when it lists options products on ISE. This rule text is similar to rule text currently within Phlx Options 4, Section 3(h)(2)(A).

Furthermore, Rule 19b-4(f)(6)(iii)<sup>50</sup> requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change under that subsection at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The Exchange has provided such notice.

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.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. Rule 19b-4(f)(6)(iii), however, permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay contained in Rule 19b-4(f)(6)(iii) so that may immediately amend and clarify its rules by removing rule text from Options 2, Section 4(a) that

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<sup>50</sup> 17 CFR 240.19b-4(f)(6)(iii).

refrains Market Makers from purchasing a call option or a put option at a price more than \$0.25 below parity, as well as certain products from Options 4, Section 3(h). The Exchange also proposes to immediately relocate rule text concerning bid/ask differentials for long-term option series, as well as Supplementary Material .02 to Options 2, Section 4, concerning business continuity and disaster recovery plans. Finally, the Exchange proposes to amend Options 4, Section 3(h) to clarify its current rule text to avoid confusion. The proposed amendments are not novel.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

This proposal is similar to a proposal by Phlx.<sup>51</sup> Phlx Options 4, Section 3(h)(2)(A), (B), (C) and (D) has similar rule text as proposed herein.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

1. Notice of Proposed Rule Change for publication in the Federal Register.

5. Text of the proposed rule change.

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<sup>51</sup>

Id.

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_ ; File No. SR-ISE-2021-14)

June \_\_, 2021

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Various Rules

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 June 9, 2021, 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 Options 2, Section 4, Obligations of Market Makers; Options 4, Section 3, Criteria for Underlying Securities; Options 4, Section 8, Long-Term Options Contracts; and Options 4A, Section 12, Terms of Index Options Contracts.

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.

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

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

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Options 2, Section 4, Obligations of Market Makers; Options 4, Section 3, Criteria for Underlying Securities; Options 4, Section 8, Long-Term Options Contracts; and Options 4A, Section 12, Terms of Index Options Contracts. Each change will be described below.

Options 2, Section 4(a)

The Exchange proposes to remove the following rule text from Options 2, Section 4(a), which has been in place since ISE's inception:<sup>3</sup>

...Ordinarily, Market Makers are expected to:

- (1) Refrain from purchasing a call option or a put option at a price more than \$0.25 below parity, although a larger amount may be appropriate considering the particular market conditions. In the case of calls, parity is measured by the bid in the

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<sup>3</sup> See Securities Exchange Act Release No. 42455 (February 24, 2000), 65 FR 11388 (March 2, 2000) (In the Matter of the Application of The International Securities Exchange LLC for Registration as a National Securities Exchange; Findings and Opinion of the Commission).

underlying security, and in the case of puts, parity is measured by the offer in the underlying security.

(2) The \$0.25 amount above may be increased, or the provisions of this Rule may be waived, by the Exchange on a series-by-series basis.

This proposed rule text also previously existed on Cboe Exchange, Inc. within prior Rule 8.7<sup>4</sup> and was removed from Cboe's Rulebook in 2019.<sup>5</sup> The Exchange likewise desires to remove this restriction on Market Makers which does not exist on Cboe or other Nasdaq affiliated markets.<sup>6</sup> The proposed rule text is currently waived on ISE pursuant to Options 2, Section 4(a)(2). The Exchange proposes to remove this rule text from Options 2, Section 4 as the Exchange does not desire to enforce this provision in the future. The Exchange believes that this market maker provision is no longer necessary.

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<sup>4</sup> Prior Interpretation and Policy .02 to Rule 8.7 provided, "Market-Makers are expected ordinarily to refrain from purchasing a call option or a put option at a price more than \$0.25 below parity, although a larger amount may be appropriate considering the particular market conditions. In the case of calls, parity is measured by the bid in the underlying security, and in the case of puts, parity is measured by the offer in the underlying security. The \$0.25 amount above may be increased, or the provisions of this Interpretation may be waived, by the Exchange on a series-by-series basis."

<sup>5</sup> Cboe's rule change merely noted, with respect to the removal of Cboe's parity rule, that the filing makes non-substantive changes to the rule governing a Market-Maker's general obligations (current Rule 8.7, in part), most of which remove redundant provisions that are already covered under the umbrella of a Market-Maker's obligation to engage in dealing to maintain fair and orderly markets. No specific argument is provided with respect to removing this provision. See Securities Exchange Act 87024 (September 19, 2019), 84 FR 50545 (September 25, 2019) (SR-CBOE-2019-059) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Certain Rules Relating To Market-Makers Upon Migration to the Trading System Used by Cboe Affiliated Exchanges).

<sup>6</sup> See Nasdaq Phlx LLC, The Nasdaq Options Market LLC and Nasdaq BX, Inc. at Options 2, Section 4 (Obligations of Market Makers).

Today, ISE incentivizes Market Makers through pricing<sup>7</sup> and allocation<sup>8</sup> to quote tightly in their assigned options series. Primary Market Makers and Competitive Market Makers also have other obligations with respect to market making<sup>9</sup> in addition to other quoting obligations<sup>10</sup> that they must abide by when quoting on ISE. Also, since the adoption of the rule, the Exchange has adopted the obvious error rule<sup>11</sup> which permits the Exchange to review a transaction as potentially erroneous based on a theoretical price. Also, ISE orders are subject to trade-through compliance, thereby limiting the prices at which orders may execute.<sup>12</sup> Market Makers are relied upon to provide liquidity on ISE, which benefits other Members who have an opportunity to interact with the order flow. The

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<sup>7</sup> See Options 7 (Option Pricing). ISE offers lower fees and rebates to Market Makers based on the percentage of time spent on the National Best Bid or National Best Offer ("NBBO") for certain qualifying series.

<sup>8</sup> See Options 3, Section 10 (Priority of Quotes and Orders). Primary Market Makers are offered an enhanced allocation provided the Primary Market Maker is quoting at same price as a non- Priority Customer Order or Market Maker quote.

<sup>9</sup> See Options 2, Section 4. ISE Market Makers must for example: (1) compete with other Market Makers to improve the market in all series of options classes to which the Market Maker is appointed; (2) make markets that, absent changed market conditions, will be honored for the number of contracts entered into the Exchange's System in all series of options classes to which the Market Maker is appointed; (3) update market quotations in response to changed market conditions in all series of options classes to which the Market Maker is appointed; and (4) price options contracts fairly by, among other things, bidding and offering so as to create differences of no more than \$5 between the bid and offer following the opening rotation in an equity or index options contract. See Options 2, Section 4(b).

<sup>10</sup> See Options 2, Section 5 (Electronic Market Maker Obligations and Quoting Requirements). Further, Options 3, Section 8(c)(3) requires Primary Market Makers to submit a Valid Width Quote during the Opening Process.

<sup>11</sup> See Options 3, Section 20 (Nullification and Adjustment of Options Transactions including Obvious Errors).

<sup>12</sup> See Options 3, Section 4(b)(6).

Exchange believes that the obligation to refrain from purchasing a call option or a put option at a price more than \$0.25 below parity places yet another obligation on ISE Market Makers that is not required on Cboe or other Nasdaq markets. The Exchange believes that this additional obligation is not necessary to maintain fair and orderly markets and notes the Exchange has waived this obligation.

#### Bid/Ask Differentials

The Exchange proposes to amend Options 2, Section 4(b)(4) and Options 4A, Section 12(b)(i) to relocate text concerning bid/ask differentials for long-term option series. Currently, Options 4, Section 8(a) describes the bid/ask differentials for long-term options series for equity options and exchange-traded products and Options 4A, Section 12(b)(i) describes the bid/ask differentials for long-term options series for indexes. Currently, the bid/ask differentials shall not apply to any options series until the time to expiration is less than nine (9) months for equity options and exchange-traded funds as provided for within Options 4, Section 8(a). Currently, bid/ask differentials shall not apply to any options series until the time to expiration is less than twelve (12) months for index options as provided for within Options 4A, Section 12(b)(i).

The Exchange proposes to centralize the bid/ask differentials within new Options 2, Section 4(b)(4)(iii) and add a sentence to both Options 4, Section 8(a) and Options 4A, Section 12(b)(i) that cites to Options 2, Section 4(b)(4)(iii) for information on bid/ask differentials for the various products. The Exchange believes that this relocation will provide Primary Market Makers and Competitive Market Makers with centralized information regarding their bid/ask differential requirements. The Exchange is not amending the bid/ask differentials; the rule text is simply being relocated.

### Business Continuity and Disaster Recovery Plan

The Exchange proposes to relocate Supplementary Material .02 to Options 2, Section 4, concerning business continuity and disaster recovery plans, to General 2, Section 12, which is currently reserved. The Exchange proposes to title General 2, Section 12 as “Business Continuity and Disaster Recovery Plan Testing Requirements for Members Pursuant to Regulation SCI.” The rule text is being relocated without change. The Exchange proposes to relocate this rule text to harmonize ISE’s rules with that of Nasdaq PHLX LLC (“Phlx”), Nasdaq BX, Inc. and The Nasdaq Stock Market LLC which all have business continuity and disaster recovery plans located within General 2, Section 12 of their respective rulebooks.<sup>13</sup> The Exchange also proposes to reserve Sections 7-10 and 13-22 within General 2.<sup>14</sup> Harmonizing the rule locations of the rules of the Nasdaq affiliated markets will make it easier for market participants to review and compare the rules of each Nasdaq market.

### Options 4, Section 3

The Exchange proposes to remove the following products from Options 4, Section 3(h): the ETFS Silver Trust, the ETFS Palladium Trust, the ETFS Platinum Trust or the Sprott Physical Gold Trust. The Exchange no longer lists these products and proposes to remove them the products from its listing rules. The Exchange will file a proposal with the Commission if it determines to list these products in the future.

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<sup>13</sup> Similar rule changes will also be made for Nasdaq GEMX, LLC and Nasdaq MRX, LLC.

<sup>14</sup> General 2, Sections 5 and 6 are currently reserved. These sections are proposed to be deleted. The proposed text would instead reflect General 2, Sections 5-10 are reserved.

The Exchange proposes to amend Options 4, Section 3(h) by removing the rule text at the end of the paragraph which provides, “all of the following conditions are met.” Paragraph (h) would simply end with “provided that:” and direct market participants to subparagraphs (1) and (2). The Exchange also proposes to capitalize “the” at the beginning of Options 4, Section 3(h)(1) and remove “; and” at the end of the paragraph and instead at a period so that subparagraphs (1) and (2) are not linked, but rather read independently. Today, Options 4, Section 3(h)(1) applies to all Exchange-Traded Fund Shares. The Exchange proposes to clarify that Options 4, Section 3(h)(2) applies to only international or global Exchange-Traded Fund Shares. Specifically, the Exchange proposes to amend Options 4, Section 3(h)(2) to provide, “Exchange-Traded Fund Shares based on international or global indexes, or portfolios that include non-U.S. securities, shall meet the following criteria.” Phlx Options 4, Section 3(h) currently has similar rule text.<sup>15</sup> Proposed Options 4, Sections 3(h) generally concerns securities deemed appropriate for options trading. The proposed new rule text adds language stating that subparagraph (h)(2) of Options 4, Section 3 applies to the extent the Exchange-Traded Fund Share is based on international or global indexes, or portfolios that include non-U.S. securities. This language is intended to serve as a guidepost and clarify that (1) subparagraph (h)(2) does not apply to an Exchange-Traded Fund Shares based on a U.S. domestic index or portfolio, and (2) subparagraph (h)(2) includes Exchange-Traded Fund Shares that track a portfolio and do not track an index.

The Exchange proposes to amend Options 4, Section 3(h)(2)(A) to remove the phrase “for series of portfolio depositary receipts and index fund shares based on

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<sup>15</sup> Phlx will also file to conform its rule text to the proposed text within Options 4, Section 3(h)(2).

international or global indexes.”. Today, Options 4, Section 3(h), subparagraphs (h)(1)<sup>16</sup> and (h)(v)<sup>17</sup> permit the Exchange to list options on Exchange-Traded Fund Shares based on generic listing standards for portfolio depositary receipts and index fund shares without applying component based requirements in subparagraphs (h)(2)(B) – (D). By removing the proposed rule text, the Exchange would make clear that subparagraph (h)(2)(A) applies to Exchange-Traded Fund Shares based on international or global indexes, or portfolios that include non-U.S. securities, that are listed pursuant to generic listing standards and comply with Options 4, Section 3(h) and subparagraph (h)(1).

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<sup>16</sup> Subsection (h)(i) concerns passive Exchange-Traded Fund Shares. Subsection (h)(1) provides, “represent interests in registered investment companies (or series thereof) organized as open-end management investment companies, unit investment trusts or similar entities that hold portfolios of securities and/or financial instruments, including, but not limited to, stock index futures contracts, options on futures, options on securities and indices, equity caps, collars and floors, swap agreements, forward contracts, repurchase agreements and reverse repurchase agreements (the "Financial Instruments"), and money market instruments, including, but not limited to, U.S. government securities and repurchase agreements (the "Money Market Instruments") comprising or otherwise based on or representing investments in broad-based indexes or portfolios of securities and/or Financial Instruments and Money Market Instruments (or that hold securities in one or more other registered investment companies that themselves hold such portfolios of securities and/or Financial Instruments and Money Market Instruments).”

<sup>17</sup> Subsection (h)(v) concerns active Exchange-Traded Fund Shares. Subsection (h)(v) Provides, “represents an interest in a registered investment company (“Investment Company”) organized as an open-end management company or similar entity, that invests in a portfolio of securities selected by the Investment Company’s investment adviser consistent with the Investment Company’s investment objectives and policies, which is issued in a specified aggregate minimum number in return for a deposit of a specified portfolio of securities and/or a cash amount with a value equal to the next determined net asset value (“NAV”), and when aggregated in the same specified minimum number, may be redeemed at a holder’s request, which holder will be paid a specified portfolio of securities and/or cash with a value equal to the next determined NAV (“Managed Fund Share”).”

The Exchange also proposes to amend the term “comprehensive surveillance agreement” within Options 4, Section 3(h)(2) (A) – (D) to instead provide “comprehensive surveillance sharing agreement.” This amendment will bring greater clarity to the term.

Further, the Exchange proposes to add the phrase “if not available or applicable, the Exchange-Traded Fund’s” within Options 4, Section 3(h)(2)(B), (C), and (D) to clarify that when component securities are not available, the portfolio of securities upon which the Exchange-Traded Fund Share is based can be used instead. The Exchange notes that “not available” is intended for cases where the Exchange does not have access to the index components, in those cases the Exchange would look to the portfolio components. The term “not applicable” is intended if the fund is active and does not track an index and only the portfolio is available. As noted above, this rule text currently exists within Phlx Options 4, Section 3(h).

The Exchange also proposes to wordsmith Options 4, Section 3(h)(2)(B) to amend the phrase to provide, “any non-U.S. component securities of an index on which the Exchange-Traded Fund Shares are based or if not available or applicable, the Exchange-Traded Fund’s portfolio of securities that are not subject to comprehensive surveillance sharing agreements do not in the aggregate represent more than 50% of the weight of the index or portfolio;”. The Exchange believes that the revised wording will bring greater clarity to the rule text.

Similarly, the Exchange proposes to wordsmith Options 4, Section 3(h)(2)(C) and (D) to relocate the phrase “on which the Exchange-Traded Fund Shares are based” and

add “or portfolio” to bring greater clarity to the rule text by conforming the rule text of (C) and (D) to the language within (B).

#### Technical Amendments

The Exchange proposes a non-substantive technical amendment to Options 4, Section 3(C)(2)(A)(ii) to correct a typographical error by changing a “than” to a “that”.

The Exchange proposes a non-substantive technical amendment to Options 4, Section 3(g)(2) to capitalize “section”. The Exchange proposes a non-substantive technical amendment to Options 4, Section 3(h)(1) to change “In” to “in”.

Finally, the Exchange proposes to add new Options 4C and mark it as reserved. Phlx added a 4C to its Rulebook and this rule change will harmonize ISE’s Rulebook structure to Phlx’s Rulebook Structure.<sup>18</sup>

#### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>19</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>20</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

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<sup>18</sup> See Securities Exchange Act Release No. 91488 (April 6, 2021), 86 FR 19037 (April 12, 2021) (SR-Phlx-2021-14) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Phlx Options Rules at Options 4 Under the Options 4 Title in the Exchanges Rulebooks Shell Structure).

<sup>19</sup> 15 U.S.C. 78f(b).

<sup>20</sup> 15 U.S.C. 78f(b)(5).

Options 2, Section 4(a)

The Exchange's proposal to remove certain rule text from Options 2, Section 4(a) that refrains Market Makers from purchasing a call option or a put option at a price more than \$0.25 below parity is consistent with the Act. The Exchange desires to remove this restriction on Market Makers which does not exist on Cboe or other Nasdaq affiliated markets.<sup>21</sup> The proposed rule text is currently waived on ISE pursuant to Options 2, Section 4(a)(2). The Exchange believes that this market maker provision is no longer necessary. Today, ISE incentivizes Market Makers through pricing<sup>22</sup> and allocation<sup>23</sup> to quote tightly in their assigned options series. Primary Market Makers and Competitive Market Makers also have other obligations with respect to market making<sup>24</sup> in addition to other quoting obligations<sup>25</sup> that they must abide by when quoting on ISE. Also, since the adoption of the rule, the Exchange has adopted the obvious error rule<sup>26</sup> which permits the Exchange to review a transaction as potentially erroneous based on a theoretical price. Also, ISE orders are subject to trade-through compliance, thereby limiting the prices at which orders may execute.<sup>27</sup> Market Makers are relied upon to provide liquidity on ISE, which benefits other Members who have an opportunity to interact with the order flow.

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<sup>21</sup> See supra note 5.

<sup>22</sup> See supra note 7.

<sup>23</sup> See supra note 8.

<sup>24</sup> See supra note 9.

<sup>25</sup> See supra note 10.

<sup>26</sup> See supra note 11.

<sup>27</sup> See supra note 12.

The Exchange believes that the obligation to refrain from purchasing a call option or a put option at a price more than \$0.25 below parity places yet another obligation on ISE Market Makers that is not required on Cboe or other Nasdaq markets. The Exchange believes that this additional obligation is not necessary to maintain fair and orderly markets and notes the Exchange has waived this obligation and the removal of this provision would remove an impediment to and perfect the mechanism of a free and open market and a national market system.

#### Bid/Ask Differentials

The Exchange's proposal to amend Options 2, Section 4(b)(4) and Options 4A, Section 12(b)(i) to relocate text concerning bid/ask differentials for long-term option series is consistent with the Act. The Exchange's proposal will centralize the bid/ask differentials within new Options 2, Section 4(b)(4)(iii) and add a sentence to both Options 4, Section 8(a) and Options 4A, Section 12(b)(i) that cites to Options 2, Section 4(b)(4)(iii) for information on bid/ask differentials for the various products. The Exchange is not amending the bid/ask differentials; the rule text is simply being relocated. The Exchange believes that this relocation will provide Primary Market Makers and Competitive Market Makers with centralized information regarding their bid/ask differential requirements.

#### Business Continuity and Disaster Recovery Plan

The Exchange's proposal to relocate Supplementary Material .02 to Options 2, Section 4, concerning business continuity and disaster recovery plans, to General 2, Section 12, which is currently reserved, is consistent with the Act. This rule text will harmonize ISE's rules with that of Phlx, Nasdaq BX, Inc. and The Nasdaq Stock Market

LLC which all have business continuity and disaster recovery plans located within General 2, Section 12 of their respective rulebooks.<sup>28</sup> Harmonizing the rule locations of the rules of the Nasdaq affiliated markets will make it easier for market participants to review and compare the rules of each Nasdaq market. The Exchange also proposes to reserve Sections 7-10 and 13-22 within General 2. These changes are non-substantive as the rule text is not being amended.

#### Options 4, Section 3

The Exchange's proposal to remove the following products from Options 4, Section 3(h): the ETFs Silver Trust, the ETFs Palladium Trust, the ETFs Platinum Trust or the Sprott Physical Gold Trust is consistent with the Act because the Exchange no longer lists these products and proposes to remove them the products from its listing rules. The Exchange will file a proposal with the Commission if it determines to list these products in the future.

The Exchange's proposal to amend Options 4, Section 3(h) by removing the rule text at the end of the paragraph which provides, "all of the following conditions are met," and creating separate paragraphs for Options 4, Section 3(h)(1) and (2) is consistent with the Act. These amendments will de-link these subparagraphs so they are read independently. Today, Options 4, Section 3(h)(1) applies to all Exchange-Traded Fund Shares. The Exchange's proposal to clarify that Options 4, Section 3(h)(2) applies to only international or global indexes or portfolios that include non-U.S. securities will bring greater clarity to the qualification standards for listing options on Exchange-Traded

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<sup>28</sup>

See supra note 13.

Fund Shares. Phlx Options 4, Section 3(h) currently has similar rule text.<sup>29</sup> Proposed Options 4, Sections 3(h) generally concerns securities deemed appropriate for options trading. The proposed new rule text adds language stating that subparagraph (h)(2) of Options 4, Section 3 applies to the extent the Exchange-Traded Fund Share is based on international or global indexes or portfolios that include non-U.S. securities. This language is intended to serve as a guidepost and clarify that (1) subparagraph (h)(2) does not apply to an Exchange-Traded Fund Shares based on a U.S. domestic index or portfolio, and (2) subparagraph (h)(2) includes Exchange-Traded Fund Shares that track a portfolio and do not track an index.

The Exchange's proposal to amend Options 4, Section 3(h)(2)(A) to remove the phrase "for series of portfolio depositary receipts and index fund shares based on international or global indexes," is consistent with the Act. Today, Options 4, Section 3(h), subparagraphs (h)(1)<sup>30</sup> and (h)(v)<sup>31</sup> permit the Exchange to list options on Exchange-Traded Fund Shares based on generic listing standards for portfolio depositary receipts and index fund shares without applying component based requirements in subparagraphs (h)(2)(B) – (D). By removing the proposed rule text, the Exchange would make clear that subparagraph (h)(2)(A) applies to Exchange-Traded Fund Shares based on international or global indexes, or portfolios that include non-U.S. securities, that are listed pursuant to generic listing standards and comply with Options 4, Section 3(h) and subparagraph (h)(1).

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<sup>29</sup> Phlx will also file to conform its rule text to the proposed text within Options 4, Section 3(h)(2).

<sup>30</sup> See supra note 16.

<sup>31</sup> See supra note 17.

The Exchange’s proposal to amend the term “comprehensive surveillance agreement” within Options 4, Section 3(h)(2) (A) – (D) to instead provide “comprehensive surveillance sharing agreement” is consistent with the Act as the amendment will bring greater clarity to the term.

The Exchange’s proposal to add the phrase “if not available or applicable, the Exchange-Traded Fund’s” to Options 4, Section 3(h)(2)(B), (C), and (D) is consistent with the Act as it will clarify that when component securities are not available, the portfolio of securities upon which the Exchange-Traded Fund Share is based can be used instead. This rule text currently exists within Phlx Options 4, Section 3(h).

The Exchange’s proposal to amend and relocate the rule text within Options 4, Section 3(h)(2)(B), (C), and (D) will bring greater clarity to the current rule text by explicitly providing that the index being referenced is the one on which the Exchange-Traded Fund Shares is based. Also, adding “or portfolio” to Options 4, Section 3(h)(2)(C), and (D) will bring greater clarity to the rule text by conforming the rule text of (C) and (D) to the language within (B).

#### Technical Amendments

The Exchange’s proposal to make certain non-substantive technical amendment to Options 4, Section 3(C)(2)(A)(ii), Options 4, Section 3(g)(2) and Options 4, Section 3(h)(1) are consistent with the Act. Also, adding Options 4C and reserving it within the rules is a non-substantive amendment which will harmonize ISE’s Rulebook structure to Phlx’s Rulebook Structure.<sup>32</sup>

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<sup>32</sup>

See supra note 18.

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.

Options 2, Section 4(a)

The Exchange's proposal to remove certain rule text from Options 2, Section 4(a) that refrains Market Makers from purchasing a call option or a put option at a price more than \$0.25 below parity does not impose an undue burden on competition. The Exchange desires to remove this restriction on Market Makers which does not exist on Cboe or other Nasdaq affiliated markets.<sup>33</sup> The proposed rule text is currently waived on ISE pursuant to Options 2, Section 4(a)(2). Market Makers are relied upon to provide liquidity on ISE, which benefits other Members who have an opportunity to interact with the order flow. The Exchange believes that the obligation to refrain from purchasing a call option or a put option at a price more than \$0.25 below parity places yet another obligation on ISE Market Makers that is not required on Cboe or other Nasdaq markets. The Exchange believes that this additional obligation is not necessary to maintain fair and orderly markets and notes the Exchange has waived this obligation.

Bid/Ask Differentials

The Exchange's proposal to amend Options 2, Section 4(b)(4) and Options 4A, Section 12(b)(i) to relocate text concerning bid/ask differentials for long-term option series does not impose an undue burden on competition. The Exchange's proposal will centralize the bid/ask differentials within new Options 2, Section 4(b)(4)(iii) and add a

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<sup>33</sup>

See supra note 5.

sentence to both Options 4, Section 8(a) and Options 4A, Section 12(b)(i) that cites to Options 2, Section 4(b)(4)(iii) for information on bid/ask differentials for the various products. The Exchange believes that this relocation will provide Primary Market Makers and Competitive Market Makers with centralized information regarding their bid/ask differential requirements.

#### Business Continuity and Disaster Recovery Plan

The Exchange's proposal to relocate Supplementary Material .02 to Options 2, Section 4, concerning business continuity and disaster recovery plans, to General 2, Section 12, which is currently reserved, does not impose an undue burden on competition. This rule text will harmonize ISE's rules with that of Phlx, Nasdaq BX, Inc. and The Nasdaq Stock Market LLC which all have business continuity and disaster recovery plans located within General 2, Section 12 of their respective rulebooks.<sup>34</sup> Harmonizing the rule locations of the rules of the Nasdaq affiliated markets will make it easier for market participants to review and compare the rules of each Nasdaq market. This change is non-substantive as the rule text is not being amended.

#### Options 4, Section 3

The Exchange's proposal to remove the following products from Options 4, Section 3(h): the ETFS Silver Trust, the ETFS Palladium Trust, the ETFS Platinum Trust or the Sprott Physical Gold Trust does not impose an undue burden on competition because the Exchange no longer lists these products and proposes to remove them the products from its listing rules. No Member will be permitted to trade these products on ISE.

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<sup>34</sup> See supra note 13.

The Exchange’s proposal to amend Options 4, Section 3(h) by removing the rule text at the end of the paragraph which provides, “all of the following conditions are met,” and creating separate paragraphs for Options 4, Section 3(h)(1) and (2) does not impose an undue burden on competition. These amendments will de-link these subparagraphs so they are read independently. Today, Options 4, Section 3(h)(1) applies to all Exchange-Traded Fund Shares. The Exchange’s proposal to clarify that Options 4, Section 3(h)(2) applies to only international or global Exchange-Traded Fund Shares that include non-U.S. securities will bring greater clarity to the qualification standards for listing options on Exchange-Traded Fund Shares. Specifically, this language is intended to serve as a guidepost and clarify that (1) subparagraph (h)(2) does not apply to an Exchange-Traded Fund Shares based on a U.S. domestic index or portfolio, and (2) subparagraph (h)(2) includes Exchange-Traded Fund Shares that track a portfolio and do not track an index. This amendment will uniformly apply the criteria within Options 4, Section 3 when it lists options products on ISE.

The Exchange’s proposal to amend Options 4, Section 3(h)(2)(A) to remove the phrase “for series of portfolio depositary receipts and index fund shares based on international or global indexes,” does not impose an undue burden on competition. Today, Options 4, Section 3(h), subparagraphs (h)(1)<sup>35</sup> and (h)(v)<sup>36</sup> permit the Exchange to list options on Exchange-Traded Fund Shares based on generic listing standards for portfolio depositary receipts and index fund shares without applying component based requirements in subparagraphs (h)(2)(B) – (D). By removing the proposed rule text, the

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<sup>35</sup> See supra note 16.

<sup>36</sup> See supra note 17.

Exchange would make clear that subparagraph (h)(2)(A) applies to Exchange-Traded Fund Shares based on international or global indexes, or portfolios that include non-U.S. securities, that are listed pursuant to generic listing standards and comply with Options 4, Section 3(h) and subparagraph (h)(1). This amendment will uniformly apply the criteria within Options 4, Section 3 when it lists options products on ISE.

The Exchange's proposal to amend the term "comprehensive surveillance agreement" within Options 4, Section 3(h)(2) (A) – (D) to instead provide "comprehensive surveillance sharing agreement" does not impose an undue burden on competition as the amendment will bring greater clarity to the term.

The Exchange's proposal to add the phrase "if not available or applicable, the Exchange-Traded Fund's" to Options 4, Section 3(h)(2)(B), (C), and (D) does not impose an undue burden on competition as it will clarify that when component securities are not available, the portfolio of securities upon which the Exchange-Traded Fund Share is based can be used instead.

The Exchange's proposal to amend and relocate the rule text within Options 4, Section 3(h)(2)(B), (C), and (D) will bring greater clarity to the current rule text by explicitly providing that the index being referenced is the one on which the Exchange-Traded Fund Shares is based. Also, adding "or portfolio" to Options 4, Section 3(h)(2)(C), and (D) will bring greater clarity to the rule text by conforming the rule text of (C) and (D) to the language within (B).

#### Technical Amendments

The Exchange's proposal to make certain non-substantive technical amendment to Options 4, Section 3(C)(2)(A)(ii), Options 4, Section 3(g)(2) and Options 4, Section

3(h)(1) does not impose an undue burden on competition. Also, adding Options 4C and reserving it within the rules is a non-substantive amendment which will harmonize ISE's Rulebook structure to Phlx's Rulebook Structure.<sup>37</sup>

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

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 from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>38</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>39</sup>

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

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<sup>37</sup> See supra note 18.

<sup>38</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>39</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.

Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-ISE-2021-14 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-2021-14. This file number should be included on the subject line if e-mail 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 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; 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-ISE-2021-14 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>40</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>40</sup> 17 CFR 200.30-3(a)(12).

**EXHIBIT 5**

*New text is underlined; deleted text is in brackets.*

**Nasdaq ISE, LLC Rules**

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**General 2 Organization and Administration**

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[Section 5. Reserved

Section 6. Reserved]

**Sections 5-10 Reserved**

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**Section 12. Business Continuity and Disaster Recovery Plan Testing Requirements for Members Pursuant to Regulation SCI**

With respect to the Exchange's business continuity and disaster recovery plans, including its backup systems, the Exchange shall:

(a) Establish standards for the designation of those Members that the Exchange reasonably determines are, taken as a whole, the minimum necessary for the maintenance of fair and orderly markets in the event of the activation of such plans. Such standards may include volume-based and/or market share-based criteria, and may be adjusted from time to time by the Exchange. The Exchange will provide public notice of the standards.

(b) Designate Members pursuant to the standards established in paragraph (a) of this Rule and require participation by such designated Members in scheduled functional and performance testing of the operation of such plans, in the manner and frequency specified by the Exchange, provided that such frequency shall not be less than once every 12 months. The Exchange will provide at least six months prior notice to Members that are designated for mandatory testing, and participation of such Members is a condition of membership.

**Section 13-22 Reserved**

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**Options 2 Options Market Participants**

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**Section 4. Obligations of Market Makers**

(a) *General.* Transactions of a Market Maker should constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and

Market Makers should not make bids or offers or enter into transactions that are inconsistent with such a course of dealings. [Ordinarily, Market Makers are expected to:

- (1) Refrain from purchasing a call option or a put option at a price more than \$0.25 below parity, although a larger amount may be appropriate considering the particular market conditions. In the case of calls, parity is measured by the bid in the underlying security, and in the case of puts, parity is measured by the offer in the underlying security.
- (2) The \$0.25 amount above may be increased, or the provisions of this Rule may be waived, by the Exchange on a series-by-series basis.]

(b) *Appointment.* With respect to each options class to which a Market Maker is appointed under Options 2, Section 3, the Market Maker has a continuous obligation to engage, to a reasonable degree under the existing circumstances, in dealings for his own account when there exists, or it is reasonably anticipated that there will exist, a lack of price continuity, a temporary disparity between the supply of and demand for a particular options contract, or a temporary distortion of the price relationships between options contracts of the same class. Without limiting the foregoing, a Market Maker is expected to perform the following activities in the course of maintaining a fair and orderly market:

- (1) To compete with other Market Makers to improve the market in all series of options classes to which the Market Maker is appointed.
- (2) To make markets that, absent changed market conditions, will be honored for the number of contracts entered into the Exchange's System in all series of options classes to which the Market Maker is appointed.
- (3) To update market quotations in response to changed market conditions in all series of options classes to which the Market Maker is appointed.
- (4) *Intra-day Bid/Ask Differentials.* To price options contracts fairly by, among other things, bidding and offering so as to create differences of no more than \$5 between the bid and offer following the opening rotation in an equity or index options contract. The Exchange may establish differences other than the above for one or more series or classes of options.
  - (i) The bid/offer differentials stated in subparagraph (b)(4) of this Rule shall not apply to in-the-money options series where the underlying securities market is wider than the differentials set forth above. For these series, the bid/ask differential may be as wide as the spread between the national best bid and offer in the underlying security.
  - (ii) The Exchange or its authorized agent may calculate bids and asks for various indices for the sole purpose of determining permissible bid/ask differentials on options on these indices. These values will be calculated by determining the

weighted average of the bids and asks for the components of the corresponding index. These bids and asks will be disseminated by the Exchange at least every fifteen (15) seconds during the trading day solely for the purpose of determining the permissible bid/ask differential that market-makers may quote on an in-the-money option on the indices. For in-the-money series in index options where the calculated bid/ask differential is wider than the applicable differential set out in subparagraph (b)(4) of this Rule, the bid/ask differential in the index options series may be as wide as the calculated bid/ask differential in the underlying index. The Exchange will not make a market in the basket of stock comprising the indices and is not guaranteeing the accuracy or the availability of the bid/ask values.

(iii) Bid/ask differentials shall not apply to any options series until the time to expiration is less than nine (9) months for equity options and exchange-traded products. Bid/ask differentials shall not apply to any options series until the time to expiration is less than twelve (12) months for index options.

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#### **Supplementary Material to Options 2, Section 4**

.01 A Primary Market Maker must act with due diligence in handling orders of Public Customers and must accord priority to such orders addressed pursuant to paragraph (c) of this Rule over the Primary Market Maker's principal orders.

[.02 With respect to the Exchange's business continuity and disaster recovery plans, including its backup systems, the Exchange shall:

(a) Establish standards for the designation of those Members that the Exchange reasonably determines are, taken as a whole, the minimum necessary for the maintenance of fair and orderly markets in the event of the activation of such plans. Such standards may include volume-based and/or market share-based criteria, and may be adjusted from time to time by the Exchange. The Exchange will provide public notice of the standards.

(b) Designate Members pursuant to the standards established in paragraph (a) of this Rule and require participation by such designated Members in scheduled functional and performance testing of the operation of such plans, in the manner and frequency specified by the Exchange, provided that such frequency shall not be less than once every 12 months. The Exchange will provide at least six months prior notice to Members that are designated for mandatory testing, and participation of such Members is a condition of membership.]

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#### **Options 4 Options Listing Rules**

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**Section 3. Criteria for Underlying Securities**

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*(c) Securities of Restructured Companies.*

\* \* \* \* \*

(2) "Share" and "Number of Shareholder" Guidelines. In determining whether a Restructure Security satisfies the share guideline set forth in Options 4, Section 3(b)(1) (the "Share Guideline") or the number of holders guideline set forth in Options 4, Section 3(b)(2) (the "Number of Shareholders Guideline"), the Exchange may rely upon the facts and circumstances that it expects to exist on the option's intended listing date, rather than on the date on which the Exchange selects for options trading the underlying Restructure Security.

(A) The Exchange may assume that:

(i) both the "Share" and "Number of Shareholders" Guidelines are satisfied if, on the option's intended listing date, the Exchange expects no fewer than forty (40) million shares of the Restructure Security to be issued and outstanding; and

(ii) either such Guideline is satisfied if, on the option's intended listing day, the Exchange expects the Restructure Security to be listed on an exchange or automatic quotation system that has, and is subject to, an initial listing requirement that is no less stringent than the Guideline in question.

\* \* \* \* \*

(g) Securities deemed appropriate for options trading shall include shares issued by registered closed-end management investment companies that invest in the securities of issuers based in one or more foreign countries ("International Funds") if they meet the criteria and guidelines set forth in this Rule and either:

(1) the Exchange has a market information sharing agreement with the primary home exchange for each of the securities held by the fund, or

(2) the International Fund is classified as a diversified fund as that term is defined by [s]Section 5(b) of the Investment Company Act of 1940, as amended, and the securities held by the fund are issued by issuers based in five or more countries.

(h) Securities deemed appropriate for options trading shall include shares or other securities ("Exchange-Traded Fund Shares") that are traded on a national securities exchange and are defined as an "NMS" stock under Rule 600 of Regulation NMS, and

that (i) represent interests in registered investment companies (or series thereof) organized as open-end management investment companies, unit investment trusts or similar entities that hold portfolios of securities and/or financial instruments, including, but not limited to, stock index futures contracts, options on futures, options on securities and indices, equity caps, collars and floors, swap agreements, forward contracts, repurchase agreements and reverse repurchase agreements (the "Financial Instruments"), and money market instruments, including, but not limited to, U.S. government securities and repurchase agreements (the "Money Market Instruments") comprising or otherwise based on or representing investments in broad-based indexes or portfolios of securities and/or Financial Instruments and Money Market Instruments (or that hold securities in one or more other registered investment companies that themselves hold such portfolios of securities and/or Financial Instruments and Money Market Instruments) or (ii) represent interests in a trust or similar entity that holds a specified non-U.S. currency or currencies deposited with the trust when aggregated in some specified minimum number may be surrendered to the trust or similar entity by the beneficial owner to receive the specified non-U.S. currency or currencies and pays the beneficial owner interest and other distributions on the deposited non-U.S. currency or currencies, if any, declared and paid by the trust ("Currency Trust Shares") or (iii) represent commodity pool interests principally engaged, directly or indirectly, in holding and/or managing portfolios or baskets of securities, commodity futures contracts, options on commodity futures contracts, swaps, forward contracts and/or options on physical commodities and/or non-U.S. currency ("Commodity Pool ETFs") or (iv) represent interests in the SPDR® Gold Trust, the iShares COMEX Gold Trust, the iShares Silver Trust, or the ETFS Gold Trust[, the ETFS Silver Trust, the ETFS Palladium Trust, the ETFS Platinum Trust or the Sprott Physical Gold Trust] or (v) represents an interest in a registered investment company ("Investment Company") organized as an open-end management company or similar entity, that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies, which is issued in a specified aggregate minimum number in return for a deposit of a specified portfolio of securities and/or a cash amount with a value equal to the next determined net asset value ("NAV"), and when aggregated in the same specified minimum number, may be redeemed at a holder's request, which holder will be paid a specified portfolio of securities and/or cash with a value equal to the next determined NAV ("Managed Fund Share"); provided that [all of the following conditions are met]:

(1) [t]The Exchange-Traded Fund Shares either (i) meet the criteria and guidelines set forth [I]n paragraphs (a) and (b) above; or (ii) the Exchange-Traded Fund Shares are available for creation or redemption each business day from or through the issuing trust, investment company, commodity pool or other entity in cash or in kind at a price related to net asset value, and the issuer is obligated to issue Exchange-Traded Fund Shares in a specified aggregate number even if some or all of the investment assets and/or cash required to be deposited have not been received by the issuer, subject to the condition that the person obligated to deposit the investment assets has undertaken to deliver them as soon as possible and such undertaking is secured by the delivery and maintenance of collateral consisting of cash or cash

equivalents satisfactory to the issuer of the Exchange-Traded Fund Shares, all as described in the Exchange-Traded Fund Shares' prospectus[; and].

(2) [the ]Exchange-Traded Fund Shares based on international or global indexes, or portfolios that include non-U.S. securities, shall meet the following criteria:

(A) are listed pursuant to generic listing standards [for series of portfolio depositary receipts and index fund shares based on international or global indexes] under which a comprehensive surveillance sharing agreement is not required; or

(B) any non-U.S. component securities of an index on which the Exchange-Traded Fund Shares are based or if not available or applicable, the Exchange-Traded Fund's portfolio of securities that are not subject to comprehensive surveillance sharing agreements [on which the Exchange-Traded Fund Shares are based that are not subject to comprehensive surveillance agreements] do not in the aggregate represent more than 50% of the weight of the index or portfolio;

(C) component securities of an index on which the Exchange-Traded Fund Shares are based or if not available or applicable, the Exchange-Traded Fund's portfolio of securities [on which the Exchange-Traded Fund Shares are based] for which the primary market is in any one country that is not subject to a comprehensive surveillance sharing agreement do not represent 20% or more of the weight of the index or portfolio; and

(D) component securities of an index on which the Exchange-Traded Fund Shares are based or if not available or applicable, the Exchange-Traded Fund's portfolio of securities [on which the Exchange-Traded Fund Shares are based] for which the primary market is in any two countries that are not subject to comprehensive surveillance sharing agreements do not represent 33% or more of the weight of the index or portfolio[;].

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## **Section 8. Long-Term Options Contracts**

(a) Notwithstanding conflicting language in Options 3, Section 5, the Exchange may list long-term options contracts that expire from twelve (12) to thirty-nine (39) months from the time they are listed. There may be up to ten expiration months for options on the SPDR® S&P 500® exchange-traded fund (the "SPY ETF") and up to six (6) expiration months for options on all other securities. Strike price interval[, bid/ask differential] and continuity rules shall not apply to such options series until the time to expiration is less than nine (9) months. Bid/ask differentials for long-term options contracts are specified within Options 2, Section 4(b)(4)(i)(A).

(b) After a new long-term options contract series is listed, such series will be opened for trading either when there is buying or selling interest, or forty (40) minutes prior to the

close, whichever occurs first. No quotations will be posted for such options series until they are opened for trading.

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#### **Options 4A Options Index Rules**

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#### **Section 12. Terms of Index Options Contracts**

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#### **(b) Long-Term Index Options Series.**

(1) Notwithstanding the provisions of paragraph (a)(3), above, the Exchange may list long-term index options series that expire from twelve (12) to sixty (60) months from the date of issuance.

(i) Index long term options series may be based on either the full or reduced value of the underlying index. There may be up to ten (10) expiration months, none further out than sixty (60) months. Strike price intervals[, bid/ask differential] and continuity Rules shall not apply to such options series until the time to expiration is less than twelve (12) months. Bid/ask differentials for long-term options contracts are specified within Options 2, Section 4(b)(4)(i)(A).

(ii) When a new Index long term options series is listed, such series will be opened for trading either when there is buying or selling interest, or forty (40) minutes prior to the close, whichever occurs first. No quotations will be posted for such options series until they are opened for trading.

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#### **Options 4C Reserved**

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