

*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-FINRA-2021-016. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2021-016 and should be submitted on or before July 19, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>72</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-92226; File No. SR-ISE-2021-14]

### Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change 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)

June 22, 2021.

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 ("Commission") the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend 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.

#### 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.

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

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

#### 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 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

<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 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>72</sup> 17 CFR 200.30-3(a)(12).

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. 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 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 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 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

<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 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).

<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.

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

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> 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 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.

#### 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. The Exchange believes that the obligation to refrain from purchasing a call option or

<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”).”

<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.

<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.

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 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 depository 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 depository 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).

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>

#### 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

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

<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.

<sup>32</sup> See *supra* note 18.

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 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.

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 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.

<sup>33</sup> See *supra* note 5.

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

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

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

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

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>38</sup> and Rule 19b-4(f)(6)<sup>39</sup> thereunder. 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) of the Act<sup>40</sup> and Rule 19b-4(f)(6)<sup>41</sup> thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>42</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>43</sup> the Commission may designate a shorter time if such action is consistent with protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Exchange's proposal does not raise any new or novel issues. Therefore, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission designates the proposed rule change to be operative on upon filing.<sup>44</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 Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule

change should be approved or disapproved.

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>45</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>46</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 Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

### IV. Solicitation of Comments

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

#### Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](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 email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the

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

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

submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ISE-2021-14 and should be submitted on or before July 19, 2021.

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

**J. Matthew DeLesDernier,**  
Assistant Secretary.

[FR Doc. 2021-13654 Filed 6-25-21; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-92231; File No. SR-Phlx-2021-37]

### Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Pricing Schedule at Equity 7, Section 3

June 22, 2021

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 11, 2021, Nasdaq PHLX LLC ("Phlx" 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

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

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

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

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

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

<sup>40</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>41</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of 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.

<sup>42</sup> 17 CFR 240.19b-4(f)(6).

<sup>43</sup> 17 CFR 240.19b-4(f)(6).

<sup>44</sup> For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).