

(“SPXW”) options both before and after the introduction of Tuesday expirations and Thursday expirations for SPXW options on April 18 and May 11, 2022, respectively.<sup>49</sup> The Exchange states that analyzing whether the introduction of new SPXW p.m.-settled expirations (*i.e.*, SPXW options with Tuesday and Thursday expirations) impacted the market quality of then-existing SPXW p.m.-settled expirations (*i.e.*, SPXW options with Monday, Wednesday, and Friday expirations) provides a reasonable substitute to evaluate whether the introduction of p.m.-settled index options impacted the market quality of the SPX market when the Program began.<sup>50</sup> Therefore, the Exchange believes analyzing the impact of new SPXW options on then-existing SPXW options permit the Exchange to extrapolate that it is unlikely the introduction of p.m.-settled SPXW options significantly impacted the market quality of a.m.-settled SPX options when the Program began.<sup>51</sup> The Exchange concludes from this analysis that the introduction of SPX options with Tuesday and Thursday options had no significant impact on the market quality of SPXW options with Monday, Wednesday, and Friday expirations. For a majority of the series analyzed, the Exchange observed no statistically significant difference in bid-ask spread or effective spread.<sup>52</sup>

The Commission believes that the evidence contained in the Exchange’s filing, the Exchange’s pilot data and reports, and the Pilot Memo analysis demonstrate that the Program has benefitted investors and other market participants by providing more flexible trading and hedging opportunities while also having no disruptive impact on the market. The market for SPXPM options has grown significantly in size over the course of the Program, and analysis of the pilot data did not identify any significant economic impact on the underlying component securities of the S&P 500 surrounding the close as a result of expiring p.m.-settled SPX options nor did it indicate a deterioration in market quality (as measured by bid-ask and effective spreads) for an existing product when a new p.m.-settled expiration was

(with Monday, Wednesday, and Friday expirations) as twice the amount of the absolute value of the difference between an order execution price and the midpoint of the national best bid and offer at the time of execution, adjusted for the difference in size between SPXW options and SPY options.

<sup>49</sup> For purposes of comparison, the Exchange paired SPXW options and SPY options with the same moneyness and same days to expiration.

<sup>50</sup> See Notice, 88 FR at 4269.

<sup>51</sup> See *id.* at 4270.

<sup>52</sup> See *id.*

introduced. Further, significant changes in closing procedures in the decades since index options moved to a.m. settlement may also serve to mitigate the potential impact of p.m.-settled index options on the underlying cash markets.

Accordingly, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with section 6(b)(5) of the Act<sup>53</sup> and the rules and regulations thereunder applicable to a national securities exchange.

## V. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>54</sup> that the proposed rule change (SR-CBOE-2023-005), as modified by Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>55</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98443; File No. SR-ISE-2023-19]

### Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 3, Section 13 Related to PIM

September 20, 2023.

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 September 8, 2023, Nasdaq ISE, LLC (“ISE” or “Exchange”) filed with the Securities and Exchange Commission (the “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 3, Section 7, Types of Orders and Order and Quote Protocols; Options 3, Section 11, Auction Mechanisms; and

<sup>53</sup> 15 U.S.C. 78f(b)(5).

<sup>54</sup> 15 U.S.C. 78s(b)(2).

<sup>55</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.

Options 3, Section 13, Price Improvement Mechanism for Crossing Transactions.

The text of the proposed rule change is available on the Exchange’s website at <https://listingcenter.nasdaq.com/rulebook/ise/rules>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

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

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

###### 1. Purpose

The Exchange proposes to amend Options 3, Section 7, Types of Orders and Order and Quote Protocols; Options 3, Section 11, Auction Mechanisms; and Options 3, Section 13, Price Improvement Mechanism for Crossing Transactions. Each change is described below.

###### Options 3, Section 7

###### Opening Only

The Exchange proposes to amend Options 3, Section 7(u), Opening Sweep<sup>3</sup> and Supplementary Material .02(e) to Options 3, Section 7 related to Opening Only<sup>4</sup> or “OPG” orders. The proposed rule text was adopted as part of a planned System migration.<sup>5</sup>

<sup>3</sup> An Opening Sweep is a one-sided order entered by a Market Maker through SQF for execution against eligible interest in the System during the Opening Process. This order type is not subject to any protections listed in Options 3, Section 15, except for Automated Quotation Adjustments. The Opening Sweep will only participate in the Opening Process pursuant to Options 3, Section 8(b)(1) and will be cancelled upon the open if not executed. See Options 3, Section 7(u).

<sup>4</sup> An Opening Only (“OPG”) order is entered with a TIF of “OPG.” This order can only be executed in the Opening Process pursuant to Options 3, Section 8. This order type is not subject to any protections listed in Options 3, Section 15, except Size Limitation. Any portion of the order that is not executed during the Opening Process is cancelled. OPG orders may not route. See Supplementary Material .02(e) to Options 3, Section 7.

<sup>5</sup> See Securities Exchange Act Release No. 96821 (February 6, 2023), 88 FR 8950 (February 10, 2023)

Options 3, Section 7(t) currently provides that an Opening Sweep would not be subject to any protections listed in Options 3, Section 15, except Automated Quotation Adjustments in Options 3, Section 15. Supplementary Material .02(e) to Options 3, Section 7 currently provides that an OPG Order would not be subject to any protections listed in Options 3, Section 15, except Size Limitation. At this time, the Exchange proposes to amend the rule text to specify that an Opening Sweep and an OPG Order would be subject to the Market Wide Risk Protection in Options 3, Section 15.

The Market Wide Risk Protection in Options 3, Section 15(a)(1)(C) automatically removes Member orders when certain firm-set thresholds are met. Specifically, the Market Wide Risk Protection requires all Members to provide parameters for the order entry and execution rate protections. The Market Wide Risk Protection would apply to an Opening Sweep and an OPG Order because it captures the order entry and execution rate for both Opening Sweeps and OPG Orders that are entered in the Opening Process as described in Options 3, Section 8. The Exchange believes the availability of the Market Wide Risk Protection during the Opening Process would assist Members in managing their pre-open risk by allowing Members to adhere to their firm thresholds. The Exchange notes that other risk protections within Options 3, Section 15 do not apply to wither an Opening Sweep or an Opening Only Order because the risk protection either relies on the BBO, which available after the Opening Process, or the risk protection is optional. Finally, the Exchange also proposes a technical amendment to capitalize the word “orders” in Supplementary Material .02(e) to Options 3, Section 7.

Options 3, Sections 11 and 13

The Exchange proposes to amend Options 3, Section 11(b)(4)(A) related to the Facilitation Mechanism. Currently, the last sentence in Options 3, Section 11(b)(4)(A) provides that a facilitation order will be cancelled at the end of an exposure period if an execution would take place at a price that is inferior to the best bid (offer) on ISE. The Exchange proposes to amend this sentence to state, the “Exchange best bid (offer)” and remove the phrase “on Nasdaq ISE.” Additionally, the Exchange

proposes to add the following rule text to the end of the sentence, “or if there is a Priority Customer order on the same side Exchange best bid (offer) at the same price as the facilitation price unless the Facilitation Order can execute at a price that is better than the same side Priority Customer Order.” Today, a facilitation order must execute at a price that is better than the same side BBO if there is a Priority Customer order on the same side. The proposed rule text is being amended to align to current System functionality which prevents a Facilitation Order from trading ahead of a Priority Customer Order. As such, a Priority Customer order on the same side of the offer must be considered when executing a Facilitation Order. The Exchange proposes to add similar language to the last sentence of Options 3, Section 11(d)(3)(A) related to the Solicited Order Mechanism. The Exchange notes that these amendments do not amend the current System functionality.

The Exchange proposes to add a new Options 3, Section 11(b)(4)(iv) to describe the allocation percentage that an Electronic Access Member is able to obtain in the Facilitation Mechanism. Today, under the current System operation, the facilitating Electronic Access Member may not receive an allocation percentage, at the final price point, of more than 40% of the original size of the Facilitation Order with one or multiple competing quote(s), order(s), or Response(s), except for rounding,<sup>6</sup> when competing quotes, orders, or Responses have contracts available for execution. Options 3, Section 11(b)(4)(ii) makes clear that the facilitating Electronic Access Member will be allocated up to forty percent (40%) (or such lower percentage requested by the Member) of the original size of the facilitation order, but only after better-priced Responses, orders and quotes, as well as Priority Customer Orders and Priority Customer Responses at the facilitation price, are executed in full at such price point. The proposed rule text expressly notes that the allocation percentage will not be exceeded except for rounding purposes. This language represents current System functionality. The Exchange proposes to add similar language to Options 3, Section 11(c)(7)(E) related to the Complex Facilitation Mechanism, Options 3, Section 13(d)(7) related to the Price Improvement Mechanism for Crossing Transactions, and Options 3, Section 13(e)(5)(vi) related to the

Complex Price Improvement Mechanism to note the limitations with respect to allocations.

The Exchange proposes to amend Supplementary Material .04 to Options 3, Section 11 to replace the word “quotes” with “Responses” in the Split Price description. Orders and responses in the market that receive the benefit of the facilitation price may receive executions at Split Prices. This change to the rule text is intended to utilize the defined term “Response” pursuant to Options 3, Section 11(b)(3) may be priced at the price of the order to be facilitated or at a better price and will only be considered up to the size of the order to be facilitated.

The Exchange proposes to add a new Supplementary Material .09 to Options 3, Section 11 and a new Supplementary Material .09 to Options 3, Section 11 to provide that, today, if an allocation would result in less than one contract, then one contract will be allocated. The Exchange does not allocate fractional contracts. This language represents the current System functionality. The Exchange proposes to add the same sentence within new Supplementary Material .10 to Options 3, Section 13 regarding a PIM. Phlx has similar language.<sup>7</sup>

The Exchange proposes to amend Options 3, Section 13(b)(1) through (3) to harmonize the language within the PIM entry checks with language within Nasdaq GEMX, LLC’s (“GEMX”) PIM, Nasdaq MRX, LLC’s (“MRX”) PIM, Nasdaq Phlx LLC’s (“Phlx”) PIXL and BX’s PRISM, without changing the substantive operations of these price improvement auctions. The Exchange believes that by utilizing similar language, Members will be able to compare ISE’s PIM entry checks with similar mechanisms on Nasdaq affiliated markets.

ISE proposes to add “a price that is” to the end of Options 3, Section 13(b)(1) and add new subparagraphs (A) and (B) to distinguish opposite and same side checks. The opposite side check is currently spelled out in the current rule text, however the same side check does not specify the NBBO check. Today, if the Agency Order is for less than 50 option contracts, and if the difference between the NBBO or the difference between the internal best bid and the internal best offer is \$0.01, the Crossing Transaction must be entered at a price that is, on the same side of the Agency Order equal or better than the NBBO and better than any Limit Order or quote on ISE’s order book. The Exchange believes that the addition of the NBBO

(SR-ISE-2023-06) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Rules in Connection With a Technology Migration to Enhanced Nasdaq, Inc. (“Nasdaq”) Functionality) (“SR-ISE-2023-06”).

<sup>6</sup> ISE’s System will round up to the nearest whole number during the allocation in the Facilitation Mechanism.

<sup>7</sup> See Phlx Options 3, Section 13(b)(1)(D).

check will add clarity to the rule text because the NBBO check is always relevant in the same side check to avoid a trade-through. The Exchange also proposes to capitalize “Limit Order,” remove the word “Nasdaq” before “ISE” and remove other extraneous words as the sentence has been rearranged.

Next, the Exchange proposes to bifurcate the entry check for Agency Orders of 50 options contracts or more for the account of a Priority Customer from the entry checks for the account of a broker dealer or any other person or entity that is not a Priority Customer similar to other Nasdaq affiliated markets to provide consistent formatting. While the entry checks for new Options 3, Section 13(b)(2) and (b)(3) will not differ, the Exchange believes that retaining the same rule text format across its Nasdaq affiliated markets will allow for an easier comparison. To that end, the Exchange proposes to amend Options 3, Section 13(b)(2) to format it similar to Options 3, Section 13(b)(1). The Exchange proposes to add “for the account of a Priority Customer” to (b)(2) to distinguish it from (b)(3) which addresses the account of a broker dealer or any other person or entity that is not a Priority Customer. Options 3, Section 13(b)(2)(A) will also add rule text to address the opposite side of the market, which is not explicitly noted. Proposed Options 3, Section 13(b)(2)(A) will provide that if the Agency Order is for the account of a Priority Customer, and such order is for 50 option contracts or more, or if the difference between the NBBO or the difference between the internal BBO is greater than \$0.01, a Crossing Transaction must be entered only at a price that is equal to or better than the internal BBO and NBBO on the opposite side of the market from the Agency Order. Further, Options 3, Section 13(b)(2)(B) will explicitly note the entry check on the same side of the market and similar to Options 3, Section 13(b)(1) will include the NBBO check. Proposed Options 3, Section 13(b)(2)(B) will provide that if the Agency Order is for the account of a Priority Customer, and such order is for 50 option contracts or more, or if the difference between the NBBO or the difference between the internal BBO is greater than \$0.01, a Crossing Transaction must be entered only on the same side of the market as the Agency Order, at a price that is at least \$0.01 better than any Limit Order or quote on the ISE order book and equal to or better than the NBBO.<sup>8</sup> The

<sup>8</sup> For example, if the market is 0.98 bid and 0.99 offer, a Priority Customer PIM Order to buy for less than 50 contracts must be stopped at 0.98 cents in

Exchange believes that the addition of the NBBO check will add clarity to the rule text because the NBBO check is always relevant in the same side check to avoid a trade-through. The Exchange also proposes to capitalize “Limit Order,” remove the word “Nasdaq” before “ISE” and remove other extraneous words as the sentence has been rearranged.

As noted herein, proposed Options 3, Section 13(b)(3) will mirror Options 3, Section 13(b)(2) except that it will refer to the account of a broker dealer or any other person or entity that is not a Priority Customer. The Exchange also proposes to renumber the remainder of the paragraphs within Options 3, Section 13(b).

Finally, the Exchange proposes to add a new Options 3, Section 13(e)(5)(vii), similar to rule text in Phlx at Options 3, Section 13(b)(8) for Complex Orders. The current ISE Complex Price Improvement Mechanism rule text is silent as to same side execution price validations. The Exchange proposes to state,

[i]f the Complex PIM execution price would be the same or better than a Complex Order on the Complex Order Book on the same side of the market as the Agency Complex Order, for options classes assigned to allocate in time priority or pro-rata pursuant to Options 3, Section 14(d)(2), the Agency Complex Order may be executed at a price that is equal to the resting Complex Order's limit price.

Today, if the Complex PIM execution is the same or better than the Complex Order resting on the Complex Order Book on the same side of the market as the Agency Complex Order, for options assigned to allocate in time priority or pro-rata pursuant to Options 3, Section 14(d)(2), the Agency Complex Order may execute at a price that is equal to the resting Complex Order's limit price. This proposed rule text would make clear the manner in which the System validates prices for Complex PIMs on the same side of the market.

#### Implementation

The Exchange proposes to amend the Opening Sweep and Opening Only rule text only, within Options 3, Section 7, with its planned migration to enhanced Nasdaq functionality. Similar to SR-ISE-2023-10,<sup>9</sup> the Exchange intends to

this scenario to be accepted into a PIM Auction, provided there is no resting order or quote on the Exchange order book at 0.98 in which case the PIM Order would be rejected.

<sup>9</sup> See Securities Exchange Act Release No. 97605 (May 26, 2023), 88 FR 36350 (June 2, 2023) (SR-ISE-2023-10) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Delay the Implementation of Certain Trading Functionality) (“SR-ISE-2023-10”).

begin implementation of the amendments to the Opening Sweep and Opening Only rule text within Options 3, Section 7 prior to December 20, 2024. The Exchange would commence its implementation with a limited symbol migration and continue to migrate symbols over several weeks. The Exchange will issue an Options Trader Alert to Members to provide notification of the symbols that will migrate and the relevant dates. The other rule amendments would be operative 30 days from the effective date.

#### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>10</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>11</sup> in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

#### Options 3, Section 7

##### Opening Only

The Exchange's proposal to amend Options 3, Section 7(u), Opening Sweeps and Supplementary Material .02(e) to Options 3, Section 7 related to OPG Orders is consistent with the Act and the protection of investors and the general public because the Market Wide Risk Protection would capture the order entry and execution rate for those Opening Sweeps and OPG Orders entered in the Opening Process, which is described in Options 3, Section 8, and would assist Members in managing their pre-open risk by allowing Members to adhere to their firm thresholds. The Exchange is providing both order and quote risk protections in the Opening Process to allow Members to manage their risk. The Exchange notes that other risk protections within Options 3, Section 15 do not apply to either an Opening Sweep or an Opening Only Order because the risk protection either relies on the BBO, which is available after the Opening Process or the risk protection is optional.

##### Options 3, Sections 11 and 13

The Exchange's proposal to amend Options 3, Section 11(b)(4)(A) related to the Facilitation Mechanism is consistent with the Act and the protection of investors and the general public because the System ensures that the facilitation order is at a price that is not inferior to the Exchange best bid (offer) or if there is a Priority Customer on the same side Exchange best bid (offer) at the same price as the facilitation price, otherwise

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

the order would be cancelled. This price check ensures that the auction order may not trade at or through the Priority Customer order on the same side. This language represents the current System functionality. Similar changes are proposed to Options 3, Section 11(d)(3)(A) related to the Solicited Order Mechanism, and Options 3, Section 11(e)(4)(A) related to the Complex Solicited Order Mechanism with respect to the contra-side. These amendments represent current System functionality and similarly ensure that the auction order may not trade at or through the Priority Customer order on the contra side. This is consistent with the treatment of Priority Customer in ISE's order book allocation, described in Options 3, Section 10, wherein Priority Customer interest is executed within PIM ahead of any other interest of Members.<sup>12</sup>

The Exchange's proposal to amend new Options 3, Section 11(b)(4)(iv) related to the Facilitation Mechanism, Options 3, Section 11(c)(7)(E) related to the Complex Facilitation Mechanism, Options 3, Section 13(d)(7) related to the Price Improvement Mechanism for Crossing Transactions, and Options 3, Section 13(e)(5)(vi) related to the Complex Price Improvement Mechanism is consistent with the Act and the protection of investors and the general public by permitting rounding to occur as specified in the Exchange's rules. The proposal states how rounding interacts with the allocation percentages. The Exchange proposes to state that it will not permit an allocation percentage greater than the stated amounts in the auction rules, unless rounding is necessary. The proposed language represents the current System functionality.

The Exchange's proposal to amend Supplementary Material .04 to Options 3, Section 11 to replace the word "quotes" with "Responses" in the Split Price description is consistent with the Act and the protection of investors and the general public because orders and Responses in the market that receive the benefit of the facilitation price may receive executions at Split Prices. This change to the rule text is intended to utilize the defined term Response which pursuant to Options 3, Section 11(b)(3) may be priced at the price of the order to be facilitated or at a better price and

will only be considered up to the size of the order to be facilitated.

The Exchange's proposal to add a new Supplementary Material .09 to Options 3, Section 11 and a new Supplementary Material .10 to Options 3, Section 13 to provide that if an allocation would result in less than one contract, then one contract would be allocated is consistent with the Act and the protection of investors and the general public because one contract is the minimum unit in which an option may trade on ISE. This language represents the current System functionality. Phlx has similar language.<sup>13</sup>

The Exchange's proposal to amend Options 3, Section 13(b)(1) through (3) to harmonize the language within the PIM entry checks with language within GEMX's PIM, MRX's PIM, Phlx's PIXL and BX's PRISM, without changing the substantive operations of these price improvement auctions, is consistent with the Act and the protection of investors and the general public because by utilizing similar language, Members will be able to compare ISE's PIM entry checks with similar mechanisms on Nasdaq affiliated markets.

Amending Options 3, Section 13(b)(1) to add new subparagraphs (A) and (B) to distinguish opposite and same side checks and add within the same side check a reference to the NBBO check, is consistent with the Act and the protection of investors and the general public because the NBBO check is always relevant in the same side check to avoid a trade-through. The Exchange believes that the addition of the NBBO check will add clarity to the rule text because the NBBO check is always relevant in the same side check to avoid a trade-through. The remainder of the changes are non-substantive.

The Exchange's proposal to bifurcate the entry check for Agency Orders of 50 options contracts or more for the account of a Priority Customer from the entry checks for the account of a broker dealer or any other person or entity that is not a Priority Customer into two new paragraphs, a (b)(2) and a (b)(3), is consistent with the Act and the protection of investors and the general public because retaining the same rule text format across its Nasdaq affiliated markets will allow for an easier comparison.

The Exchange's proposal to add "for the account of a Priority Customer" to new subparagraph (b)(2) to explicitly address the opposite side of the market and also note the NBBO entry check on the same side of the market is consistent with the Act and the protection of

investors and the general public because the new format will provide the parameters for each check. Further, the NBBO check is always relevant in the same side check to avoid a trade-through. The remainder of the changes are non-substantive. Mirroring the same language within Options 3, Section 13(b)(2)(B), except to note that it is for the account of a broker dealer or any other person or entity that is not a Priority Customer will allow Members to compare ISE's PIM entry checks with similar mechanisms on Nasdaq affiliated markets.

The Exchange's proposal to add a new Options 3, Section 13(e)(5)(vii) for Complex PIM Orders is consistent with the Act and the protection of investors and the general public because it ensures the Complex PIM would not execute at a price that trades at or through the Complex Order's limit price. Today, the rule text does not specify the price at which an Agency Complex Order may execute. The Exchange notes that there are no Priority Customer overlays in Options 3, Section 14(d)(2) and therefore, the Agency Complex Order may be executed at a price that is equal to the resting Complex Order's limit price. Phlx has substantially similar rule text at Options 3, Section 13(b)(8).

#### *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 3, Section 7

Opening Only

The Exchange's proposal to amend Options 3, Section 7(u), Opening Sweeps and Supplementary Material .02(e) to Options 3, Section 7 related to OPG Orders does not impose an intra-market burden on competition because the Market Wide Risk Protection is available to all Members in the Opening Process. The Exchange's proposal to amend Opening Sweeps and OPG Orders does not impose an inter-market burden on competition because other options exchanges may similarly offer such risk protections on their opening order types.

Options 3, Sections 11 and 13

The Exchange's proposal to amend Options 3, Section 11(b)(4)(A) related to the Facilitation Mechanism, Options 3, Section 11(d)(3)(A) related to the Solicited Order Mechanism, and Options 3, Section 11(e)(4)(A) related to the Complex Solicited Order

<sup>12</sup> See also ISE Options 3, Section 13(d)(1), "At a given price, 'Priority Customer Interest' (Priority Customer Orders and Improvement Orders from Priority Customers) is executed in full before 'non-Priority Customer Interest' (non-Priority Customer Orders, Improvement Orders from non-Priority Customers and Market Maker quotes)."

<sup>13</sup> See Phlx Options 3, Section 13(b)(1)(D).

Mechanism to state that that the order must execute at a price that is better than the same side BBO if this is a Priority Customer on the same side does not impose an intra-market burden on competition because all auction orders in these aforementioned auction mechanisms would be handled in a uniform manner by the System such that those orders would not be permitted to trade at or through the Priority Customer order on the same side. The Exchange's proposal to amend Options 3, Section 11(b)(4)(A) related to the Facilitation Mechanism, Options 3, Section 11(d)(3)(A) related to the Solicited Order Mechanism, and Options 3, Section 11(e)(4)(A) related to the Complex Solicited Order Mechanism to make clear that that the order must execute at a price that is better than the same side BBO if these is a Priority Customer on the same side does not impose an inter-market burden on competition because other options markets similarly have customer overlay priorities.

The Exchange's proposal to amend new Options 3, Section 11(b)(4)(iv) related to the Facilitation Mechanism, Options 3, Section 11(c)(7)(E) related to the Complex Facilitation Mechanism, Options 3, Section 13(d)(7) related to the Price Improvement Mechanism for Crossing Transactions, and Options 3, Section 13(e)(5)(vi) related to the Complex Price Improvement Mechanism does not impose an intra-market burden on competition because the Exchange's rules regarding rounding are applied in a uniform manner to all Members submitting an order into an auction mechanism. The Exchange's proposal to amend new Options 3, Section 11(b)(4)(iv) related to the Facilitation Mechanism, Options 3, Section 11(c)(7)(E) related to the Complex Facilitation Mechanism, Options 3, Section 13(d)(7) related to the Price Improvement Mechanism for Crossing Transactions, and Options 3, Section 13(e)(5)(vi) related to the Complex Price Improvement Mechanism does not impose an inter-market burden on competition because other options exchanges similarly round in excess of allocation percentages such as BX.<sup>14</sup>

The Exchange's proposal to amend Supplementary Material .04 to Options 3, Section 11 to replace the word "quotes" with "Responses" in the Split Price description does not impose an intra-market burden on competition because orders and responses in the market that receive the benefit of the facilitation price may receive executions

at Split Prices. This clarification to the rule text is intended to correct the current language. The Exchange's proposal to amend Supplementary Material .04 to Options 3, Section 11 to replace the word "quotes" with "Responses" in the Split Price description does not impose an inter-market burden on competition because this rule text change is specific to ISE's rule language.

The Exchange's proposal to add a new Supplementary Material .09 to Options 3, Section 11 and a new Supplementary Material .10 to Options 3, Section 13 to provide that, today, if an allocation would result in less than one contract, then one contract will be allocated does not impose an intra-market burden on competition because the System would uniformly allocate contracts with a minimum unit of one contract. The Exchange's proposal to add a new Supplementary Material .09 to Options 3, Section 11 and a new Supplementary Material .10 to Options 3, Section 13 to provide that, today, if an allocation would result in less than one contract, then one contract will be allocated does not impose an inter-market burden on competition because other options markets similarly specify a minimum unit of rounding such as Phlx.<sup>15</sup>

The Exchange's proposal to amend Options 3, Section 13(b)(1) through (3) to harmonize the language within the PIM entry checks within GEMX's PIM, MRX's PIM, Phlx's PIXL and BX's PRISM, without changing the substantive operations of these price improvement auctions, distinguishing opposite and same side checks, and adding the NBBO check reference within the same side check do not impose an intra-market undue burden on competition because harmonizing the language will enable Members to compare ISE's PIM entry checks with similar mechanisms on Nasdaq affiliated markets. Further, the NBBO check is always relevant in the same side check to avoid a trade-through. The Exchange's proposal to amend Options 3, Section 13(b)(1) through (3) to harmonize the language within the PIM entry checks within GEMX's PIM, MRX's PIM, Phlx's PIXL and BX's PRISM, without changing the substantive operations of these price improvement auctions, distinguishing opposite and same side checks, and adding the NBBO check reference within the same side check do not impose an inter-market undue burden on competition because other options markets have their own price improvement auctions and are free to

denote their entry checks in a similar fashion and have both same and opposite side entry checks which may differ from ISE's rule.

The Exchange's proposal to add a new Options 3, Section 13(e)(5)(vii) for Complex Orders does not impose an intra-market undue burden on competition because the Exchange would uniformly apply the price check for the Agency Complex Orders such that the Agency Complex Order may be executed at a price that is equal to the resting Complex Order's limit price. The Exchange's proposal to add a new Options 3, Section 13(e)(5)(vii) for Complex Orders does not impose an inter-market undue burden on competition because the price check is similar to price checks on other options markets such as Phlx.<sup>16</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>17</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>18</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.

<sup>16</sup> See Phlx Options 3, Section 13(b)(5)(B)(vi).

<sup>17</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>18</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.

<sup>14</sup> See BX Options 3, Section 13(ii)(A)(1).

<sup>15</sup> See Phlx Options 3, Section 13(b)(1)(D).

#### 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-2023-19 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-2023-19. 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 the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-ISE-2023-19 and should be submitted on or before October 17, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

**Sherry R. Haywood,**  
*Assistant Secretary.*

[FR Doc. 2023-20802 Filed 9-25-23; 8:45 am]

**BILLING CODE 8011-01-P**

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98450; File No. SR-ISE-2023-08]

#### Self-Regulatory Organizations; Nasdaq ISE, LLC; Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Make Permanent Certain P.M.-Settled Pilots

September 20, 2023.

##### I. Introduction

On February 23, 2023, Nasdaq ISE LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to make permanent the pilot program to permit the listing and trading of options based on 1/5 the value of the Nasdaq-100 Index ("Nasdaq-100") and the Exchange's nonstandard expirations pilot program (collectively, the "Programs"). The proposed rule change was published for comment in the *Federal Register* on March 2, 2023.<sup>3</sup> On April 7, 2023, pursuant to section 19(b)(2) of the Act,<sup>4</sup> the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.<sup>5</sup> On May 11, 2023, the Exchange filed Amendment No. 1 to the proposed rule change ("Amendment No. 1").<sup>6</sup> On May 31, 2023, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change and published

<sup>19</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>3</sup> See Securities Exchange Act Release No. 96979 (February 24, 2023), 88 FR 13182 ("Notice").

<sup>4</sup> 15 U.S.C. 78s(b)(2).

<sup>5</sup> See Securities Exchange Act Release No. 97261, 88 FR 22509 (April 13, 2023). The Commission designated May 31, 2023, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule change.

<sup>6</sup> In Amendment No. 1, the Exchange inserts two footnotes and amends a sentence in order to further clarify parts of the empirical analysis performed by the Exchange. Amendment No. 1 is available at: <https://www.sec.gov/comments/sr-ise-2023-08/srise202308.htm>.

Amendment No. 1 for notice and comment.<sup>7</sup> On August 28, 2023, the Commission designated a longer period for Commission action on proceedings to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.<sup>8</sup> The Commission did not receive any comment letters and is approving the proposed rule change, as modified by Amendment No. 1.

##### II. Background

When cash-settled<sup>9</sup> index options were first introduced in the 1980s, they generally utilized closing-price settlement procedures (*i.e.*, p.m. settlement).<sup>10</sup> The Commission became concerned with the impact of p.m.-settled, cash-settled index options on the underlying cash equities markets, and in particular, added market volatility and sharp price movements near the close on expiration days.<sup>11</sup> These concerns were heightened during the "triple-witching" hour on the third Friday of March, June, September, and December when index options, index futures, and options on index futures expired concurrently.<sup>12</sup> Academic research at the time provided at least some evidence suggesting that futures and options expirations contributed to excess volatility and reversals around the close on those days.<sup>13</sup>

In light of the concerns with p.m. settlement and to help ameliorate the price effects associated with expirations

<sup>7</sup> See Securities Exchange Act Release No. 97626, 88 FR 37110 (June 6, 2023).

<sup>8</sup> See Securities Exchange Act Release No. 98233, 88 FR 60516 (September 1, 2023). The Commission designated October 28, 2023, as the date by which the Commission shall either approve or disapprove the proposed rule change.

<sup>9</sup> The seller of a "cash-settled" index option pays out the cash value of the applicable index on expiration or exercise. A "physical delivery" option, like equity and ETF options, involves the transfer of the underlying asset rather than cash. See Characteristics and Risks of Standardized Options, available at: <https://www.theocc.com/Company-Information/Documents-and-Archives/Options-Disclosure-Documents>.

<sup>10</sup> See Securities Exchange Act Release No. 65256 (September 2, 2011), 76 FR 55969, at 55972 (September 9, 2011) (SR-C2-2011-008) (Order approving proposed rule change to establish a pilot program to list and trade SPXPM options on the C2 Options Exchange, Incorporated) ("C2 SPXPM Approval").

<sup>11</sup> See *id.*

<sup>12</sup> See *id.*

<sup>13</sup> See Securities and Exchange Commission, Division of Economic Risk and Analysis, Memorandum dated February 2, 2021 on Cornerstone Analysis of PM Cash-Settled Index Option Pilots (September 16, 2020) ("Pilot Memo") at 5, available at: [https://www.sec.gov/files/Analysis\\_of\\_PM\\_Cash\\_Setled\\_Index\\_Option\\_Pilots.pdf](https://www.sec.gov/files/Analysis_of_PM_Cash_Setled_Index_Option_Pilots.pdf) (citing, among other papers, Stoll, Hans R., and Robert E. Whaley, "Expiration day effects of index options and futures," Monograph Series in Finance and Economics, no. 3 (1986)).