SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-100123; File No. SR-ISE-2024-18)

May 13, 2024

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend ISE Options 7

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on May 7, 2024, 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 ISE's Pricing Schedule at Options 7. [3]

While the changes proposed herein are effective upon filing, the Exchange has designated the pricing changes become operative on August 1, 2024, with the exception of the Exposed Order definition and Dedicated Gateway amendments which would be effective on September 1, 2024.

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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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 The Exchange withdrew SR-ISE-2024-15 on May 7, 2024 and submitted this filing.

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

ISE proposes to amend its Pricing Schedule at Options 7. Specifically, ISE proposes to: (1) add the defined term "Exposed Order" within Options 7, Section 1(c); (2) amend Options 7, Section 7.C to offer certain free ports in connection with an upcoming technology migration;[4] and (3) amend Options 7, Section 8.C to discontinue offering Dedicated Gateway access services. Each change is described below.

Options 7, Section 1

The Exchange proposes to define an Exposed Order for purposes of pricing within Options 7. The Exchange introduced the concept of an "exposure" in a rule change amending ISE's routing rules.[5] In that rule change, the Exchange noted that for purposes of ISE's Options 5, Section 4 routing rule, "exposure" or "exposing" an order means a notification sent to

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4 See Options Trader Alert #2024-5. The ISE migration will commence on September 9, 2024.

5 See Securities Exchange Act Release No. 94897 (May 12, 2022), 87 FR 30294 (May 18, 2022) (SR-ISE-2022-11) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Routing Functionality in Connection With a Technology Migration). See also Securities Exchange Act Release No. 97126 (March 13, 2023), 88 FR 16485 (March 17, 2023) (SR-ISE-2023-04) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Delay the Implementation of Certain Trading Functionality).

Members with the price, size, and side of interest that is available for execution.[6] The order exposure will apply to both routed orders and non-routed or "DNR Orders." The order exposure process permits the Exchange to apply a Route Timer[7] prior to the initial and subsequent routing of an order and allows routing of the order after exposure occurs (during open trading) every time an order becomes marketable against the ABBO.[8]

At this time, the Exchange proposes to amend Options 7, Section 1(c) to provide,

> An "**Exposed Order**" is an order that is broadcast via an order exposure alert as described within Options 5, Section 4 (Order Routing). Unless otherwise noted in Options 7, Section 3 pricing, Exposed Orders will be assessed the applicable "Taker" Fee and any order or quote that executes against an Exposed Order during a Route Timer will be paid/assessed the applicable "Maker" Rebate/Fee.

As proposed, the defined term would apply a Taker Fee, where applicable, to an executed Exposed Order. If an order or quote allocates against the Exposed Order during the Route Timer described within Options 5, Section 4, the Exchange would pay/assess the applicable Maker Rebate or Maker Fee. The Exchange believes that its proposal should provide increased opportunities for participation in executions on the Exchange, facilitating the ability of the Exchange to bring together participants and encourage more robust competition for orders.

Options 7, Section 6

In connection with a technology migration[9], Members may request new FIX Ports,[10] SQF

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6 See ISE Options 5, Section 4(a) which is effective but not yet operative. See supra note 4.

7 For purposes of Options 5, Section 4, a Route Timer shall not exceed one second and shall begin at the time orders are accepted into the System, and the System will consider whether an order can be routed at the conclusion of each Route Timer.

8 See supra note 4.

9 ISE is migrating its technology to an enhanced Nasdaq, Inc. functionality which results in higher performance, scalability, and more robust architecture.

10 "Financial Information eXchange" or "FIX" is an interface that allows Members and their Sponsored Customers to connect, send, and receive messages related to orders and auction orders to the Exchange. Features include the following: (1) execution messages; (2) order messages; (3) risk protection triggers and

Ports,[11] SQF Purge Ports,[12] OTTO Ports,[13] CTI Ports,[14] and FIX DROP Ports,[15] at no additional cost, from August 1, 2024 through October 31, 2024 ("Transition Period") which are duplicative of the type and quantity of their legacy ports. These second set of new ports would allow Members time to test ports to the new environment as well as provide continuous connection to the Exchange's match engine during the Transition Period.[16] During the Transition Period, Members will be required to utilize their new ports on the new ISE platform for symbols that have migrated to the new platform, while continuing to leverage legacy ports for symbols that

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cancel notifications; and (4) post trade allocation messages. See Supplementary Material .03(a) to Options 3, Section 7.

11 "Specialized Quote Feed" or "SQF" is an interface that allows Market Makers to connect, send, and receive messages related to quotes, Immediate-or-Cancel Orders, and auction responses to the Exchange. Features include the following: (1) options symbol directory messages (e.g., underlying instruments); (2) System event messages (e.g., start of trading hours messages and start of opening); (3) trading action messages (e.g., halts and resumes); (4) execution messages; (5) quote messages; (6) Immediate-or-Cancel Order messages; (7) risk protection triggers and purge notifications; (8) opening imbalance messages; (9) auction notifications; and (10) auction responses. The SQF Purge Interface only receives and notifies of purge requests from the Market Maker. Market Makers may only enter interest into SQF in their assigned options series. See Supplementary Material .03(c) to Options 3, Section 7.

12 SQF Purge is a specific port for the SQF interface that only receives and notifies of purge requests from the Market Maker. Dedicated SQF Purge Ports enable Market Makers to seamlessly manage their ability to remove their quotes in a swift manner.

13 "Ouch to Trade Options" or "OTTO" is an interface that allows Members and their Sponsored Customers to connect, send, and receive messages related to orders, auction orders, and auction responses to the Exchange. Features include the following: (1) options symbol directory messages (e.g., underlying instruments); (2) System event messages (e.g., start of trading hours messages and start of opening); (3) trading action messages (e.g., halts and resumes); (4) execution messages; (5) order messages; (6) risk protection triggers and cancel notifications; (7) auction notifications; (8) auction responses; and (9) post trade allocation messages. See Supplementary Material .03(b) to Options 3, Section 7.

14 Clearing Trade Interface ("CTI") is a real-time cleared trade update message that is sent to a Member after an execution has occurred and contains trade details specific to that Member. The information includes, among other things, the following: (i) The Clearing Member Trade Agreement ("CMTA") or The Options Clearing Corporation ("OCC") number; (ii) badge or mnemonic; (iii) account number; (iv) information which identifies the transaction type (e.g. auction type) for billing purposes; and (v) market participant capacity. See Option 3, Section 23(b)(1).

15 FIX DROP is a real-time order and execution update message that is sent to a Member after an order been received/modified or an execution has occurred and contains trade details specific to that Member. The information includes, among other things, the following: (i) executions; (ii) cancellations; (iii) modifications to an existing order; and (iv) busts or post-trade corrections. See Options 3, Section 23(b)(3).

16 Members would contact Market Operations to acquire new duplicative ports.

have not yet migrated to the new platform.[17] For example, an ISE Member with 3 legacy SQF Ports, 1 legacy SQF Purge Port, 1 legacy FIX DROP Port, 1 legacy OTTO Port, and 1 legacy CTI Port on August 1, 2024 could request the equivalent quantity and type of new ports (3 SQF Ports, 1 SQF Purge Port, 1 FIX DROP Port, 1 OTTO Port, and 1 CTI Port) for the new ISE environment during the Transition Period at no additional cost. During the Transition Period, the ISE Member would be assessed only for legacy ports and would not be assessed for the new ports, which are duplicative of the legacy ports.

A Member may acquire additional legacy ports during the Transition Period and would be assessed the charges indicated in the current Pricing Schedule at Options 7, Section 7.C, respectively, for those additional legacy ports.

The technology migration does not require a Member to acquire any additional legacy ports or any specific number of new ports, rather the technology migration requires a new port to connect to the new ISE environment. As is the case today, a Member may decide the number of ports they desire to subscribe to on the new technology platform.[18]

Of note, only ISE Members may utilize ports on ISE and only one port is necessary to submit orders to ISE. Similarly, a Market Maker quoting on ISE only requires 1 SQF Port.[19] A Member may also obtain any number of order and execution ports, such as a SQF Purge Ports, FIX DROP Ports and CTI Ports and any number of market data ports.[20] Members are able to

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17 See Options Trader Alert #2024-5. The ISE migration will commence on September 9, 2024 and end on September 23, 2024.

18 The technology migration is 1:1 and therefore would not require a Member to acquire an additional quantity of new ports, nor would it reduce the total number of ports needed to connect to the match engine.

19 SQF Ports are utilized solely by Market Makers who are the only Members permitted to quote on ISE.

20 ISE does not assess fees for the market data ports within Options 7, Section 7.C(iii). Members may acquire any number of market data ports at no cost.

elect the quantity and type of ports they purchase based on that Member's business model.[21]

This proposal is not intended to impose any additional fees on any ISE Member. Rather, this proposal is intended to permit an ISE Member to utilize the new environment with the same type and quantity of legacy ports, at no additional cost, during the Transition Period.

Starting November 1, 2024, the port fees in Options 7, Section 7.C would apply to any substituted ports that a Member continues to subscribe to after the Transition Period. ISE will sunset legacy FIX Ports, SQF Ports, SQF Purge Ports, OTTO Ports, CTI Ports and FIX DROP Ports on December 20, 2024.

Options 7, Section 8

Today, ISE offers Market Makers the ability to access the Exchange through a Dedicated Gateway. Only Market Makers that utilize SQF ports have the option of utilizing this dedicated offering. Today, all other ports, namely FIX, OTTO and Precise, are subject to shared access through a Shared Gateway, at no cost, while an SQF port has the options of shared access, at no cost, or dedicated access. Today, ISE charges a fee of $2,250 per SQF gateway, per month, for dedicated access.

At this time, ISE proposes to discontinue Dedicated Gateway access for SQF Ports as of September 1, 2024. Similar to FIX, OTTO and Precise, SQF Ports will have shared access through a Shared Gateway at no cost.

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[21] For example, a Member may desire to utilize multiple FIX or OTTO Ports for accounting purposes, to measure performance, for regulatory reasons or other determinations that are specific to that Member.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[22] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[23] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange's proposed changes to its Pricing Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In NetCoalition v. Securities and Exchange Commission, the D.C. Circuit stated as follows: "[n]o one disputes that competition for order flow is 'fierce.' … As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'…."[24]

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current

22 See 15 U.S.C. 78f(b).

23 See 15 U.S.C. 78f(b)(4) and (5).

24 NetCoalition v. SEC, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."[25]

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options security transaction services. The Exchange is only one of seventeen options exchanges to which market participants may direct their order flow. Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. As such, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

Options 7, Section 1

The Exchange's proposal to define an Exposed Order for purposes of pricing within Options 7, Section 1(c) is reasonable because it will provide Members information as to the manner in which pricing will be applied to both the Exposed Order as well as an order or quote that allocates against the Exposed Order.[26] As proposed, the applicable Taker Fee would apply to an executed Exposed Order and the applicable Maker Rebate or Maker Fee would apply to an order or quote that allocated against the Exposed Order during the Route Timer. The Exchange believes the proposed pricing should provide increased opportunities for participation in executions on the Exchange, facilitating the ability of the Exchange to bring together participants and encourage more robust competition for orders. Order exposure has the potential to result in

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25 Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) ("Regulation NMS Adopting Release").

26 See Option 5, Section 4.

more efficient executions for participants as responses to exposed orders could result in faster executions. Order exposure assures that such exposed orders will only receive executions at a price at least as good as the price disseminated by the best away market at the time the order was received. Further, the Exchange believes that it is reasonable, equitable and not unfairly discriminatory to apply the Taker Fee to Exposed Orders and the Maker Rebate/Fee to any order or quote that executes against an Exposed Order during a Route Timer because the Exposed Order that would route to an away market if not otherwise executed on ISE would be taking liquidity from the Exchange's order book while a quote or order that executes against the Exposed Order during the Route Timer would be considered making liquidity in response to the notification sent to Members indicating the order is available for execution. Nasdaq MRX, LLC ("MRX") and Nasdaq GEMX, LLC ("GEMX") similarly assess a Taker Fee to an exposed order and pay/assess a Maker Rebate/Fee to any order or quote that executes against the exposed order during the Route Timer.[27]

The Exchange's proposal to define an Exposed Order for purposes of pricing within Options 7, Section 1(c) is equitable and not unfairly discriminatory as the proposed pricing for Exposed Orders would be uniformly applied to all orders subject to the Exchange's Route Timer, as described in Options 5, Section 4.

Options 7, Section 6

The proposed amendments to Options 7, Section 7.C to permit Members to acquire a second set of FIX Ports, SQF Ports, SQF Purge Ports, OTTO Ports, CTI Ports and FIX DROP Ports, at no cost, as part of the technology migration are reasonable because they will permit ISE Members to migrate to the new platform without a pricing impact. Specifically, the proposal is

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[27] See MRX and GEMX Options 7, Section 1(c).

intended to permit ISE Members to migrate their legacy FIX Ports, SQF Ports, SQF Purge Ports, OTTO Ports, CTI Ports and FIX DROP Ports to new ports at no additional cost during the Transition Period. This proposal will allow Members to test their ports and maintain continuous connection to the Exchange's match engine during the Transition Period.

The proposed amendments to Options 7, Section 7.C to permit Members to acquire a second set of FIX Ports, SQF Ports, SQF Purge Ports, OTTO Ports, CTI Ports and FIX DROP Ports, at no cost, as part of the technology migration are equitable and not unfairly discriminatory because no Member would have a pricing impact as a result of this proposal, provided the Member did not obtain additional new ports to connect to the ISE environment beyond the quantity and type the Member had on August 1, 2024 or additional legacy ports. No Member would be assessed a fee for the new second set of ports, provided they acquired a new second set of ports commiserate with the type and quantity of ports they subscribed to as of August 1, 2024. A Member obtaining additional legacy ports, beyond the current type and quantity of ports they have as of August 1, 2024, would be assessed the fees noted in Options 7, Section 7.C as applicable. ISE will sunset legacy FIX Ports, SQF Ports, SQF Purge Ports, OTTO Ports, CTI Ports and FIX DROP Ports on December 20, 2024 for all Members. Starting November 1, 2024, the port fees in Options 7, Section 7.C would apply to any substituted ports that a Member continues to subscribe to after the Transition Period.

The technology migration does not require a Member to acquire any additional quantity of new ports, nor would it reduce the total number of ports needed to connect to the match engine. Rather the technology migration requires a new port to replace any legacy port provided the Member desired to maintain the same number of ports on the new ISE technology platform. Of note, only ISE Members may utilize ports on ISE and only one port is necessary to submit orders to ISE. Similarly, a Market Maker quoting on ISE only requires 1 SQF Port.[28] A Member may also obtain any number of order and execution ports, such as a SQF Purge Ports, FIX DROP Ports and CTI Ports and any number of market data ports.[29] Members are able to elect the quantity and type of ports they purchase based on that Member's business model.[30]

Options 7, Section 8

The Exchange's proposal to discontinue Dedicated Access for SQF Ports as of September 1, 2024 is reasonable as all ports (FIX, OTTO, Precise, SQF Ports) would utilize a shared gateway to access the Exchange. There is no cost to utilize the Shared Gateway on ISE. The Exchange notes that GEMX and MRX do not offer Shared Gateways, rather they utilize shared access to all Members for all ports.

The Exchange's proposal to discontinue Dedicated Access for SQF Ports as of September 1, 2024 is equitable and not unfairly discriminatory as all access to the Exchange for all Members, for all ports will be at no cost through shared access.

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.

Intermarket Competition

The Exchange believes its proposal remains competitive with other options markets, and will offer market participants with another choice of venue to transact options. The Exchange notes that it operates in a highly competitive market in which market participants can readily

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28 SQF Ports are utilized solely by Market Makers who are the only Members permitted to quote on ISE.

29 ISE does not assess fees for the market data ports within Options 7, Section 7.C(iii). Members may acquire any number of market data ports at no cost.

30 For example, a Member may desire to utilize multiple FIX or OTTO Ports for accounting purposes, to measure performance, for regulatory reasons or other determinations that are specific to that Member.

favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

Intramarket Competition

Options 7, Section 1

The Exchange's proposal to define an Exposed Order for purposes of pricing within Options 7, Section 1(c) does not impose an undue burden on competition because the proposed pricing for Exposed Orders would be uniformly applied to all orders subject to the Exchange's Route Timer, as described in Options 4, Section 5.

Options 7, Section 6

The proposed amendments to Options 7, Section 7.C to permit Members to acquire a second set of FIX Ports, SQF Ports, SQF Purge Ports, OTTO Ports, CTI Ports and FIX DROP Ports, at no cost, as part of the technology migration do not impose an undue burden on competition because no Member would have a pricing impact as a result of this proposal, provided the Member did not obtain additional new ports to connect to the ISE environment beyond the quantity and type the Member had on August 1, 2024 or additional legacy ports. No Member would be assessed a fee for the new second set of ports, provided they acquired a new second set of ports commiserate with the type and quantity of ports they subscribed to as of August 1, 2024. A Member obtaining additional legacy ports, beyond the current type and quantity of ports they have as of August 1, 2024, would be assessed the fees noted in Options 7, Section 7.C as applicable. ISE will sunset legacy FIX Ports, SQF Ports, SQF Purge Ports, OTTO

Ports, CTI Ports and FIX DROP Ports on December 20, 2024 for all Members. Starting on November 1, 2024 the port fees in Options 7, Section 7.C would apply to any substituted ports that a Member continues to subscribe to after the Transition Period.

Options 7, Section 8

The Exchange's proposal to discontinue Dedicated Access for SQF Ports as of September 1, 2024 does not impose an undue burden on competition as all access to the Exchange for all Members, for all ports will be at no cost through shared access.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[31] 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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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:

[31] 15 U.S.C. 78s(b)(3)(A)(ii).

Electronic Comments:

- Use the Commission's internet comment form (https://www.sec.gov/rules/sro.shtml); or
- Send an email to rule-comments@sec.gov. Please include file number SR-ISE-2024-18 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-2024-18. 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 (https://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-2024-18 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

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

Sherry R. Haywood,

Assistant Secretary.

[32] 17 CFR 200.30-3(a)(12).