

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-83101; File No. SR-ISE-2018-40)

April 25, 2018

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend the Delay for the Re-introduction of Concurrent Complex Order Auction Functionality

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 April 19, 2018, 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 extend the delay for re-introduction of functionality which permits concurrent complex order auctions in the same complex strategy by an additional one year.

The text of the proposed rule change is available on the Exchange’s website at <http://ise.cchwallstreet.com/>, 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

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

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

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 purpose of the proposed rule change is to extend the delay for re-introduction of functionality which permits concurrent<sup>3</sup> complex order auctions in the same complex strategy by an additional one year. The Exchange previously filed<sup>4</sup> a rule change which delayed functionality permitting concurrent complex auctions in conjunction with a migration to the INET<sup>5</sup> platform. The April 2017 Rule Change provided that with the delay, a complex order auction in a particular complex strategy would not be initiated if another complex order auction is already ongoing in that complex strategy. In conjunction with the April 2017 Rule Change, the Exchange issued an Options Trader Alert notifying Members that concurrent complex auctions would not be offered at this time.<sup>6</sup>

By way of background, ISE offers various complex order auctions that are designed to provide members an opportunity to trade and to potentially receive price improvement for

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<sup>3</sup> The current ISE Rule 722 rule text refers to these auctions as “simultaneous”. The Exchange is proposing to amend the rule text to replace the word “simultaneous” with “concurrent.” This change is designed to make the rule text more accurately describe the functionality. The functionality is not being changed.

<sup>4</sup> See Securities and Exchange Act Release No. 80525 (April 25, 2017), 82 FR 20405 (May 1, 2017) (SR-ISE-2017-33) (“April 2017 Rule Change”).

<sup>5</sup> INET is the proprietary core technology utilized across Nasdaq’s global markets and utilized on The Nasdaq Options Market LLC (“NOM”), Nasdaq PHLX LLC (“Phlx”) and Nasdaq BX, Inc. (“BX”) (collectively, “Nasdaq Exchanges”). The migration of ISE to the Nasdaq INET architecture resulted in higher performance, scalability, and more robust architecture.

<sup>6</sup> See Options Trader Alert #2017–35.

complex orders that are entered on the Exchange, including an Exposure auction pursuant to Rule 722(b)(3)(iii), a Complex Price Improvement Mechanism (“PIM”) pursuant to Supplementary Material .09 to Rule 723, a Complex Facilitation Mechanism pursuant to Supplementary Material .08 to Rule 716, and Complex Solicited Order Mechanism also pursuant to Supplementary Material .08 to Rule 716. While only one PIM auction may be ongoing at any given time in a series or complex strategy, and PIMs are not permitted to queue or overlap in any manner,<sup>7</sup> there are no similar restrictions for non-PIM auctions, and any such auctions may be processed concurrently, including in parallel with a PIM auction. For example, while the trading system would prohibit a member from entering a PIM auction when another PIM auction is already ongoing in a complex strategy, if there was an Exposure auction already running a member would be able to start a PIM, Facilitation, Solicitation, or even another Exposure auction in that strategy. This allows maximum ability of members to express their trading intent on the Exchange by permitting multiple complex order auctions in the same complex strategy to be ongoing at any particular time.

When the Exchange initially delayed this functionality, the Exchange noted in the April 2017 Rule Change that it would reintroduce concurrent complex order auctions in the same complex strategy at a later date within one year of date of the filing. The Exchange filed the initial rule change on April 17, 2017, with a one year delay, and the additional one year delay would extend the implementation timeframe for this functionality to April 17, 2019. The extended delay would provide the Exchange additional time to develop and test this functionality on INET. The Exchange will issue an Options Trader Alert notifying Members when this functionality will be available. Furthermore, in connection with this change, the Exchange also

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<sup>7</sup> See Supplementary Material .04 to Rule 723.

proposes to amend Rule 722 to remove language about the migration of symbols to INET as this migration has been completed and all symbols listed by the Exchange are currently trading on the INET platform.

With the delay, only one complex order auction would continue to be ongoing at any given time in a complex strategy, and such auctions would not queue or overlap in any manner. For PIM, Facilitation, or Solicitation auctions, the Exchange would continue to reject a complex order auction of the same or different auction type in a complex strategy that would be initiated while another complex order auction is ongoing in that complex strategy.<sup>8</sup> In the case where a complex order auction has already been initiated in a complex strategy, an Exposure auction for an order for that strategy would continue to not be initiated and the order would be processed as a complex order that is not marked for price improvement,<sup>9</sup> instead of rejecting the complex order. If the member requested the order to be cancelled after the exposure period, then the complex order would continue to be cancelled back to the member.

The Exchange believes that implementing concurrent complex order auctions in the same complex strategy at a later date will not have a significant impact on members as it is rare for multiple complex order auctions in a complex strategy to be ongoing at a particular time. This is particularly the case today due to the recent decrease in the Exchange's auction timers to 100

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<sup>8</sup> The rejection message sent to the member will contain an appropriate reason code indicating that the auction was rejected due to another ongoing complex order auction in the same complex strategy.

<sup>9</sup> Currently, an Exposure order auction is automatically initiated when a member submits an eligible complex order that is marked for price improvement. See Rule 722(b)(3)(iii). Pursuant to Rule 722(b)(3)(iii), complex orders may be marked for price improvement, and if so marked, the complex order may be exposed on the complex order book for a period of up to one-second before being automatically executed. Members can also request that their complex orders be cancelled after the exposure period.

milliseconds.<sup>10</sup> The Exchange notes that prior to the migration to the INET platform concurrent complex order auctions in a strategy only occurred approximately 0.5% of the time that an auction runs on the Exchange. The Exchange therefore believes that the impact on Members will continue to be insignificant, and if a member does have auction eligible interest to execute when another complex order auction is ongoing, the member can either re-submit that order to the Exchange, after the auction has concluded, or submit it to another options market that provides similar auction functionality. In this regard, the Exchange notes that its market data feeds provide information to Members about when a complex order auction is ongoing, and Members can therefore use this information to make appropriate routing decisions based on applicable market conditions.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>11</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>12</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 because the Exchange desires to rollout the concurrent complex order auctions functionality at a later date to allow additional time to test and implement this

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<sup>10</sup> See Securities Exchange Act Release No. 79733 (January 4, 2017), 82 FR 3055 (January 10, 2017) (SR-ISE-2016-26) (permitting the Exchange to determine auction timers for PIM, Facilitation, and Solicitation within a range of 100 milliseconds and one second). Each of these auction timers are currently set to 100 milliseconds – i.e., the bottom of the range approved in the filing. Exposure auctions can be any duration up to one second (See Rule 722(b)(3)), and are also currently set to 100 milliseconds.

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

<sup>12</sup> 15 U.S.C. 78f(b)(5).

functionality. As proposed herein, within a year from April 17, 2018, the Exchange will offer concurrent auction functionality.

The Exchange does not anticipate that the proposed rule change will have any meaningful impact with respect to members' ability to execute complex order auctions as similar restrictions are already in place on other options exchanges.<sup>13</sup> Concurrent complex order auctions in a complex strategy are rare, and therefore the vast majority of the time members would be able to enter a complex order auction notwithstanding the temporary delay of the implementation of concurrent auctions. With respect to Exposure auctions, in the case where another complex order auction in the same strategy has already been initiated, the Exchange proposes to allow the complex order to continue to be processed without an auction in the same manner as complex orders that are not marked for price improvement. If the Member has marked the complex order to be cancelled after the exposure period, however, the Exchange would cancel the order back to the member consistent with that instruction. If the Member is not able to initiate a complex order auction because another complex order auction in the same strategy has been initiated, the Member may either re-initiate the auction after the auction concludes or submit the order to another options market that offers similar functionality. Thus, Members will be able to continue to express their trading intent regardless of the proposed delay in concurrent auction functionality.

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<sup>13</sup> See Phlx Rule 1098(e)(2) [sic]. Nasdaq Phlx, LLC ("Phlx"), for example, does not allow the initiation of a Complex Order Live Auction ("COLA") when there is already a Price Improvement XL ("PIXL") auction already ongoing in the strategy. Similarly, Miami International Securities Exchange LLC ("MIAX") can limit the frequency of Complex Auctions by establishing a minimum time period between such auctions, and permits only one Complex Auction per strategy to be in progress at any particular time. See MIAX Rule 518(d)(2).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impact the intense competition that exists in the options market. The Exchange does not believe that the proposed delay will impose any significant burden on inter-market competition as it does not impact the ability of other markets to offer or not offer competing functionality.

The Exchange does not believe that the proposed rule change will impose any burden on intra-market competition because all Members uniformly will not be able to initiate concurrent auctions in the same complex order strategy. Within a year from April 17, 2018, the Exchange will offer concurrent complex auction functionality.

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>14</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>15</sup>

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<sup>14</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>15</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.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of the filing. However, Rule 19b-4(f)(6)(iii)<sup>16</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. In its filing, ISE requests that the Commission waive the 30-day operative delay to allow the proposed one-year extension of the time for re-introducing concurrent complex order auction functionality to begin at the conclusion of the current delay period, which was scheduled to end on April 17, 2018. As noted above, ISE states that extending the delay for re-introducing concurrent complex order auction functionality will provide ISE with additional time to develop and test this functionality. The Exchange also notes that the proposed rule change is not expected to have any meaningful impact on members' ability to express their trading intent; ISE indicates that such auctions are rare and do not usually occur concurrently. The Commission believes that waiving the operative delay is consistent with the protection of investors and the public interest because it will provide ISE with additional time to develop and test concurrent complex order auction functionality. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.<sup>17</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: (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.

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<sup>16</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>17</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).



#### IV. Solicitation of Comments

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

##### Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-ISE-2018-40 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-2018-40. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet 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 10:00 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-2018-40, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>18</sup> 17 CFR 200.30-3(a)(12) and (59).