

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-84539; File No. SR-ISE-2018-88)

November 5, 2018

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend ISE Rule 2008(g), Pricing When Primary Market Does Not Open

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 October 23, 2018, Nasdaq ISE, LLC (“ISE” or the “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend ISE Rule 2008, Trading Sessions, Section (g), Pricing When Primary Market Does Not Open.

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 proposed rule change. The text of these statements may be examined at the places specified in

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 Exchange Rule 2008(g) regarding determination of the price of component securities for purposes of calculating the current index value at expiration of Exchange listed index options on days when the primary market for the underlying security does not open.³ The proposed amendment would apply to both AM-settled and PM-settled index options.⁴

Currently, Rule 2008(g) provides that when the primary market for a security underlying the current index value of an index option does not open for trading on a given day, the price of that security shall be determined, for purposes of calculating the current index value at

³ Three of the Exchange’s affiliated options exchanges, Nasdaq BX, Inc. (“BX”), The Nasdaq Stock Market LLC (“Nasdaq”) and Nasdaq PHLX LLC (“Phlx”), will also be proposing rule changes relating to the manner of determining an underlying index component security’s price for purposes of calculating the current index value at expiration of an index option under these circumstances. See SR-NASDAQ-2018-081, SR-Phlx-2018-63, and SR-BX-2018-049. The Exchange desires its rules to be aligned with those of the affiliated exchanges.

⁴ Currently, traditional index options expiring on the third Friday of the month are A.M.-settled, meaning that the index option’s settlement value is calculated based upon opening prices of the index’s component securities on the last day of trading in the component securities prior to expiration, normally on Friday morning. By contrast, the settlement of P.M.-settled index options is based upon the closing index value, defined as the last index value reported on a business day, for the day on which the index option is exercised. P.M.-settled options expiring on the third Friday of the month would therefore normally be settled on the basis of Friday’s closing prices of component securities.

expiration, based on the opening price of that security on the next day that its primary market is open for trading.⁵

The Exchange now proposes to delete from the rule the language providing for determination of the price of the component security, for purposes of calculating the current index value at expiration, based on the opening price of that security on the next day that its primary market is open for trading. The Exchange proposes to amend Rule 2008(g) so that it provides that when the primary market for a security underlying the current index value of an index option does not open for trading on a given day, which is an expiration day, for the purposes of calculating the settlement price at expiration, the last reported sale price of the security from the previous trading day shall be used.⁶ The revised provision would permit market participants the certainty of knowing the settlement value on the day on which the primary market fails to open. Additionally, the amendment would eliminate the potential difficulties that could arise if the reporting authority for the index were unwilling or unable to calculate the settlement value using prices for the relevant security(ies) on the next day that its primary market is open for trading.⁷

The rule would continue to provide that this procedure shall not be used if the current index value at expiration is fixed in accordance with OCC rules and by-laws. This language recognizes that OCC is authorized under its rules and by-laws to take certain actions relating to

⁵ Rule 2008(g) provides however that this procedure is not to be used if the current index value at expiration is fixed in accordance with the Rules and By-Laws of the Options Clearing Corporation (“OCC”).

⁶ Rule 2008(g) would continue to apply to both A.M.-settled and P.M.-settled index options.

⁷ The index calculator for the NDX, MNX and BKX indexes, which are products traded on Nasdaq affiliated exchanges, uses the previous day’s closing price if components of the index do not open.

settlement in the event of the unavailability or inaccuracy of the current underlying interest value.⁸ The Exchange proposes to retain this language in recognition of OCC’s authority to establish settlement prices and procedures in certain circumstances where normal settlement procedures cannot be followed due unforeseen events, such as the unanticipated closure of a primary market for a component security on a day on which it would normally be open for trading. The Exchange would thus retain the last sentence of Rule 2008(g) which will make clear that the new procedure would not apply in the event that OCC exercises its authority to determine settlement prices. Rather, the proposed new language would apply only when a primary market does not open and OCC elects not to exercise its authority to intervene and take action to establish a settlement price.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁰ 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

⁸ See OCC By-Laws Article XVII, Section 4(a), which provides in relevant part that if OCC shall determine that the primary market for one or more index components did not open or remain open for trading (or that any such components did not open or remain open for trading on such market(s)) on a trading day at or before the time when the [sic] current index value for that trading day would ordinarily be determined, or that [sic] a current index value or other value or price to be used as, or to determine, the [sic] exercise settlement amount (a “required value”) for a trading day is otherwise unreported [sic], inaccurate, unreliable, unavailable or inappropriate for purposes of calculating [sic] the exercise settlement amount, then, in addition to any other actions that [sic] OCC may be entitled to take under OCC’s bylaws and rules, the, OCC is empowered to take any or all of a range of permitted actions with respect to any series of options on such index, including fixing the exercise settlement amount.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

investors and the public interest. As noted above, the amendment to Rule 2008(g) would establish clearly the procedure for determination of an index component security's price in the event that the primary market for the security fails to open. By adopting the proposed rule amendment, the Exchange would provide certainty to the market regarding the procedure it would follow in the absence of action by OCC. Additionally, it would provide market participants with the certainty of knowing the settlement value on the day on which the primary market fails to open, and eliminate the potential difficulties that could arise if the reporting authority for the index were unwilling or unable to calculate the settlement value using prices for the relevant security(ies) on the next day that its primary market is open for trading.

It would also acknowledge clearly, however, that OCC may, under its rules and by-laws, establish settlement prices for expiring index options that may differ from the settlement prices that would otherwise be provided for in Exchange rules, thereby protecting investors and the public interest by reducing potential for confusion in that regard.

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. On the contrary, the Exchange believes that the proposed amendment will benefit investors, market participants, and the marketplace in general by setting forth clearly the manner in which index option settlement values will be determined if the primary market for a security underlying the current index value of an index option does not open for trading, allowing market participants the certainty of knowing the settlement price on the day on which the primary market fails to open, eliminating the potential difficulties that could arise if the reporting authority for the index were unwilling or unable to calculate the settlement value using prices for the relevant security(ies) on

the next day that its primary market is open for trading, and retaining the existing provision stating that the Exchange will defer to OCC in the determination of settlement prices when and if OCC exercises its authority under its own settlement price procedures in accordance with its rules and by-laws.

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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6) thereunder.¹² Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.¹³

A proposed rule change filed under Rule 19b-4(f)(6)¹⁴ normally does not become operative for 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁵ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. In its filing with the Commission, the Exchange has asked the

¹¹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹² 17 CFR 240.19b-4(f)(6).

¹³ In addition, Rule 19b-4(f)(6)(iii) 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.

¹⁴ 17 CFR 240.19b-4(f)(6).

¹⁵ 17 CFR 240.19b-4(f)(6)(iii).

Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing to provide certainty regarding the determination of settlement prices for index options when the primary market for a security underlying the current index value of an index option does not open for trading on an expiration day, including in instances in which OCC exercises its authority to determine the settlement price. According to the Exchange, the proposed rule change will allow investors to know the settlement price of an index option on the day on which the primary market of an underlying component fails to open and will avoid potential difficulties that could arise if the reporting authority for the index was unwilling or unable to calculate the settlement value using prices for the relevant securities on the next day that its primary market is open for trading. As such, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest and designates the proposed rule change operative upon filing.¹⁶

At any time within 60 days of the filing of such 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 under Section 19(b)(2)(B)¹⁷ of the Act to determine whether the proposed rule change should be approved or disapproved.

¹⁶ For purposes only of waiving the operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁷ 15 U.S.C. 78s(b)(2)(B).

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. Please include File Number SR-ISE-2018-88 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-2018-88. 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 such 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-2018-88, 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.¹⁸

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Assistant Secretary

¹⁸ 17 CFR 200.30-3(a)(12).