

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-94354; File No. SR-ISE-2022-04)

March 3, 2022

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

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 February 18, 2022, 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 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 Rules at Options 3, Section 1, Days and Hours of Business; Options 4A, Section 11, Trading Sessions; and Options 4A, Section 12, Terms of Index Options Contracts. The Exchange also proposes to adopt new Options 4A, Section 4 which is currently reserved. Finally, the Exchange proposes to make a technical amendment to Options 7, Section 1, General Provisions.

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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 ISE Rules at Options 3, Section 1, Days and Hours of Business; Options 4A, Section 11, Trading Sessions; and Options 4A, Section 12, Terms of Index Options Contracts. The Exchange also proposes to adopt new Options 4A, Section 4 which is currently reserved. Finally, the Exchange proposes to make a technical amendment to Options 7, Section 1, General Provisions. Each change is described below.

Options 3, Section 1

The Exchange proposes to amend Options 3, Section 1 concerning the Days and Hours of Business. The Exchange proposes to amend the title from “Days and Hours of Business” to “Hours of Business.” ISE recently filed to establish General 3, Section 1030, which governs the days the Exchange will be open for business.³ At this time the Exchange proposes to amend the

³ See Securities Exchange Act Release No. 93675 (November 29, 2021), 86 FR 68714 (December 3, 2021) (SR-NASDAQ-2021-69) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Include Juneteenth National Independence Day as a Holiday). ISE’s General 3 rules incorporate by reference The Nasdaq Stock Market LLC’s General 3 Rules. Rule 1030 of General 3 memorialized all current Exchange holidays and added a provision to permit the Exchange the authority to halt or suspend trading or close Exchange facilities for certain unanticipated closures.

first paragraph of Options 3, Section 1 which provides, “The Board shall determine the days the Exchange shall be open for business (referred to as “business days”) and the hours of such days during which transactions may be made on the Exchange.” The Exchange proposes to remove this sentence and instead provide,

“ISE shall be open for business as provided within General 3, Rule 1030.” This proposed text will make clear that while General 3, Section 1030 governs the days the Exchange will be open for business, the remainder of the rule addresses the hours of operation of the System and specific products. The Exchange also proposes to remove paragraph (e) as holidays are addressed within General 3, Section 1030. The remainder of the paragraphs are proposed to be re-lettered.

Options 4A, Section 4

The Exchange proposes to adopt a new rule at Options 4A, Section 4, which is currently reserved, and title the rule “Index Options Values for Settlement.” Proposed Options 4A, Section 4 would specify the way the Exchange would arrive at index options values in cases where the Exchange’s index rules would not otherwise apply. The Exchange is relocating certain portions of current ISE Options 4A rules into proposed new Options 4A, Section 4 so all related rule text would be within the same rule.

Proposed Options 4A, Section 4(a) rule text is being relocated from current rule text within Options 4A, Section 12(e) without change. The rule text currently provides that where Exchange index options rules do not apply, ISE index options would settle based on the current index value used to settle the exercise of an index options contract, which would be the closing index value for the day on which the index options contract is exercised in accordance with the

Rules of The Options Clearing Corporation (“OCC”) or, if such day is not a business day, for the most recent business day.

Proposed Options 4A, Section 4(b) rule text is being relocated from current rule text within Options 4A, Section 11(g) without change. The rule text currently provides for the current index value in the instance 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. In this case, the settlement price at expiration shall be the last reported sale price of the security from the previous trading day, unless the current index value at expiration is fixed in accordance with the Rules and By-Laws of OCC.

The Exchange also proposes to add new rule text within Options 4A, Section 4(c) which states,

With respect to any securities index on which options are traded on the Exchange, the source of the prices of component securities used to calculate the current index level at expiration is determined by the Reporting Authority for that index.

This rule text is identical to the rule text within Phlx Options 4A, Section 4(c)(1) and Cboe Exchange, Inc. (“Cboe”) Rule 4.13 at .09 of Interpretations and Policies and follows the Exchange’s current practice.⁴ The purpose of the proposed rule change is to clarify that the Reporting Authority for a securities index on which options are traded on the Exchange is the source of prices of component securities used to calculate the current index level at expiration. Certain ISE rules may be interpreted in a manner that suggests that the current index value at expiration of any securities index is determined by the opening (or closing) prices of the

⁴ See Securities Exchange Act Release No. 50269 (August 26, 2004), 69 FR 53755 (September 2, 2004) (SR-CBOE-2004-42) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Calculation of Securities Indexes Underlying Options).

underlying components as reported by each respective underlying component’s “primary market” such as current Options 4A, Section 11(g). Because Options 4A, Section 11(g) could be interpreted to mean that the primary market for each security that comprises an index will always be the source of opening and closing prices used in the calculation of the particular index’s value at expiration, the Exchange proposes to adopt the same rule text as Phlx and Cboe.⁵

The Exchange believes that Options 4A, Section 4 will provide a transparent reference to the way the Exchange arrives at index options values for settlement where the Exchange’s rules may not apply. With respect to a particular index, the Reporting Authority is the institution(s) or reporting service designated by the Exchange as the official source for calculating and determining the current value⁶ or the closing index value of the index.⁷

As noted above, the rule text within ISE Options 4A, Section 11(g) is proposed to be relocated to ISE Options 4A, Section 4(b) without change.

Options 4A, Section 12

The Exchange proposes to amend Options 4A, Section 12(a)(4) concerning European-style options, to reword the current rule text to make clear that the list which follows represents indexes on which options may be listed. The Exchange is also adding a reference to the p.m.-

⁵ See Phlx Options 4A, Section 4(c)(1) and Cboe Rule 4.13 at .09 of Interpretations and Policies.

⁶ The term “current index value” with respect to a particular index options contract means the level of the underlying index reported by the reporting authority for the index, or any multiple or fraction of such reported level specified by the Exchange. The current index value with respect to a reduced-value long term options contract is one-tenth of the current index value of the related index option. The “closing index value” shall be the last index value reported on a business day. See ISE Options 4A, Section 2(e).

⁷ See ISE Options 4A, Section 2(n). See also Supplementary Material .01 to Options 4A, Section 2.

settled index options⁸ which is proposed to be listed within proposed paragraph (a)(6)(i), described below. All of the indexes listed within Options 4A, Section 12(a)(4) are currently European-style. The p.m.-settled index option is part of a pilot program.⁹ The proposed amendments merely organize the products as either a.m.-settled or p.m.-settled within Options 4A, Section 12 for greater clarity. The proposed changes are non-substantive as they represent the way these products trade. The Exchange proposes to add the phrase “on the following indexes” to the end of Options 4A, Section 12(a)(4) and 12(a)(5) for clarity and relocate the word “following” within Options 4A, Section 12(a)(5), as well as make other minor technical amendments, in an effort to organize the lists of options indexes.

The Exchange proposes to add a new paragraph (a)(6) within Options 4A, Section 12 which describes the manner in which p.m.-settled index options¹⁰ are handled today. This language is consistent with how p.m.-settled index options on ISE are treated today. This new paragraph would provide:

P.M. - Settled Index Options. The last day of trading for P.M.-settled index options shall be the business day of expiration, or, in the case of an option contract expiring on a day that is not a business day, on the last business day before its expiration date. The current index value at expiration of the index is determined by the last reported sale price of each component security. In the event that the primary market for an underlying security does not open for trading on the expiration date, the price of that security shall be the last reported sale price prior to the expiration date. The following P.M.-settled index options are approved for trading on ISE:

⁸ Currently, the Exchange lists p.m.-settled products. This new paragraph will expand upon the current p.m.-settled products which are described in Options 4A, Section 12(a)(6) (an index option) and (b)(5) (nonstandard program).

⁹ See ISE Options 4A, Section 12(a)(6) (an index option) and Supplementary Material .07 to Options 4A, Section 12 (nonstandard program).

¹⁰ The Nasdaq Options Market LLC (“NOM”) Rules at Options 4A, Section 12(a)(6) and Phlx Options 4A, Section 12(f) contain a paragraph describing p.m.-settled index options.

This paragraph would serve to distinguish a.m.-settled and p.m.-settled index options as there is a similar paragraph regarding a.m.-settled index options within Options 4A, Section 12(a)(5).

The Exchange proposes to re-number current paragraph (a)(6) as (a)(6)(i) of Options 4A, Section 12. Current Options 4A, Section 12(a)(6) describes the Nasdaq 100 Reduced Value Index (“NQX”) which is a p.m.-settled index that is subject to a pilot program.¹¹ The Non-Standard Program, another p.m.-settled product, is separately described in detail within Options 4A, Section 12(b)(5).¹² These are both pilot programs. The proposed changes are non-substantive and merely seek to categorize existing products which were all filed with the Commission.

Finally, the Exchange proposes to amend current Options 4A, Section 12(d) to remove references to a.m.-settled index options because p.m.-settled index options are listed on ISE as well. By removing the phrase, “at the expiration of an A.M.-settled index option” the paragraph would apply to both a.m.-settled and p.m.-settled index options. Currently, Options 4A, Section 12(d) applies to p.m.-settled index options. The Exchange is not otherwise amending Options

¹¹ See Securities Exchange Act Release Nos. 82911 (March 20, 2018), 83 FR 12966 (March 26, 2018) (SR-ISE-2017-106) (Approval Order); 86071 (June 10, 2019), 84 FR 27822 (June 14, 2019) (SR-ISE-2019-18); 87379 (October 22, 2019), 84 FR 57793 (October 28, 2019) (SR-ISE-2019-27); 88683 (April 17, 2020), 85 FR 22768 (April 23, 2020) (SR-ISE-2020-18); 90257 (October 22, 2020), 85 FR 68387 (October 28, 2020) (SR-ISE-2020-33); 91485 (April 6, 2021), 86 FR 19052 (April 12, 2021) (SR-ISE-2021-05); and 93449 (October 28, 2021), 86 FR 60679 (November 3, 2021); and 93448 (October 28, 2021), 86 FR 60717 (November 3, 2021) (SR-ISE-2021-22).

¹² See Securities Exchange Act Release Nos. 82612 (February 1, 2018), 83 FR 5470 (February 7, 2018) (approving SR-ISE-2017-111) (Order Approving a Proposed Rule Change To Establish a Nonstandard Expirations Pilot Program); 85030 (February 1, 2019), 84 FR 2633 (February 7, 2019) (SR-ISE-2019-01); 85672 (April 17, 2019), 84 FR 16899 (April 23, 2019) (SR-ISE-2019-11); 87380 (October 22, 2019), 84 FR 57786 (October 28, 2019) (SR-ISE-2019-28); 88681 (April 17, 2020), 85 FR 22775 (April 23, 2020) (SR-ISE-2020-17); 90265 (October 23, 2020), 85 FR 68605 (October 29, 2020) (SR-ISE-2020-34); 91486 (April 6, 2021), 86 FR 19048 (April 12, 2021) (SR-ISE-2021-06); and 93449 (October 28, 2021), 86 FR 60679 (November 3, 2021) (SR-ISE-2021-23).

4A, Section 12(d). Options 4A, Section 12(d) describes the manner in which the reported level of the underlying index that is calculated by the reporting authority may differ from the level of the index that is separately calculated and reported by the reporting authority.

As noted above, Options 4A, Section 12(e) is proposed to be relocated to Options 4A, Section 4(a) without change.

Technical Amendments

The Exchange proposes to amend Options 7, Section 1, General Provisions, to add a “(c)” before certain defined terms to provide a way to cite to that rule text. This amendment is non-substantive.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹³ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁴ 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 1

The Exchange’s proposal to amend Options 3, Section 1 concerning the Days and Hours of Business is consistent with the Act. The proposal to amend the title from “Days and Hours of Business” to “Hours of Business” will bring greater clarity to the rule. BX recently filed to establish General 3, Section 1030, which governs the days the Exchange will be open for business.¹⁵ Amending the rule text to reference General 3, Section 1030 will provide Members

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ See note 3 above.

with a guidepost as to where to locate the rule that applies to the days the Exchange is open for business. Finally removing Options 3, Section 1(e) will avoid confusion.

Options 4A, Section 4

The Exchange's proposal to adopt a new rule at Options 4A, Section 4, which is currently reserved, and title the rule "Index Options Values for Settlement" is consistent with the Act. Proposed Options 4A, Section 4 would specify the way the Exchange would arrive at index options values in cases where the Exchange's index rules would not otherwise apply. The Exchange is relocating certain portions of current Phlx Options 4A rules into proposed new Options 4A, Section 4, without change, so all related rule text would be within the same rule.

The relocation of certain rule text within Options 4A, without change, is non-substantive. The proposal to add rule text within Options 4A, Section 4(c), which is identical to rule text within Phlx Options 4A, Section 4(c)(1) and Cboe Rule 4.13 at .09 of Interpretations and Policies is consistent with the Act. The proposed language is consistent with current practice. The Reporting Authority is the source of prices of component securities used to calculate the current index level at expiration. Today, ISE rules may be interpreted in a manner that suggests that the current index value at expiration of any particular securities index is determined by the opening (or closing) prices of the underlying components as reported by each respective underlying component's "primary market" such as current Options 4A, Section 11(g). Because Options 4A, Section 11(g) could be interpreted to mean that the primary market for each security that comprises an index will always be the source of opening and closing prices used in the calculation of the particular index's value at expiration, the Exchange proposes to adopt rule text identical to Phlx and Cboe.¹⁶

¹⁶ See note 5 above.

The Exchange believes that this proposed rule will provide a transparent reference to the way the Exchange arrives at index options values for settlement where the Exchange's rules may not apply. With respect to a particular index, the Reporting Authority is the institution(s) or reporting service designated by the Exchange as the official source for calculating and determining the current value¹⁷ or the closing index value of the index.¹⁸

Options 4A, Section 12

The Exchange's proposal to amend Options 4A, Section 12(a)(4) concerning European-style options, to reword the current rule text to make clear that the list which follows represents indexes on which options may be listed is consistent with the Act. The current language does not distinguish between a.m.-settled and p.m.-settled index options. Adding a paragraph describing a p.m.-settled index option¹⁹ to proposed Options 4A, Section 12(a)(6) will make clear the index within proposed Options 4A, Section 12(a)(6)(i) is p.m.-settled. The only index that is p.m.-settled is part of a pilot program.²⁰ The proposed amendments merely organize the products as either a.m.-settled or p.m.-settled within Options 4A, Section 12 for greater clarity. The proposed changes are non-substantive as they represent the way these products trade. Further, adding new paragraph (a)(6) within Options 4A, Section 12 which describes a p.m.-settled index options will serve to distinguish a.m.-settled and p.m.-settled index options.

Rewording current Options 4A, Section 12(d) to remove references to a.m.-settled index options is consistent with the Act as p.m.-settled index options are listed on ISE as well. By removing the phrase, "at the expiration of an A.M.-settled index option" the paragraph would

¹⁷ See note 6 above.

¹⁸ See note 7 above.

¹⁹ See note 8 above.

²⁰ See note 9 above.

apply to both a.m.-settled and p.m.-settled index options. Currently, Options 4A, Section 12(d) applies to p.m.-settled index options. Options 4A, Section 12(d) describes the way the reported level of the underlying index that is calculated by the reporting authority may differ from the level of the index that is separately calculated and reported by the reporting authority.

The remainder of the proposed changes to Options 4A, Section 12 are technical and non-substantive.

Technical Amendments

The Exchange's proposal to amend Options 7, Section 1, General Provisions, to add a "(c)" before certain defined terms to provide a way to cite to that rule text is a non-substantive amendment.

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 1

The Exchange's proposal to amend Options 3, Section 1 concerning the Days and Hours of Business does not impose an undue burden on competition. The proposal to amend the title from "Days and Hours of Business" to "Hours of Business" will bring greater clarity to the rule. Amending the rule text to reference General 3, Section 1030 will provide Members with a guidepost as to where to locate the rule that applies to the days the Exchange is open for business. Finally, the removal of Options 3, Section 1(e) will avoid confusion.

Options 4A, Section 4

The Exchange's proposal to adopt a new rule at Options 4A, Section 4, does not impose an undue burden on competition. Proposed Options 4A, Section 4 would specify the way the Exchange would arrive at index options values in cases where the Exchange's index rules would

not otherwise apply. The Exchange is relocating certain portions of current Phlx Options 4A rules into proposed new Options 4A, Section 4, without change and, therefore, those amendments are non-substantive. The proposal to add rule text within Options 4A, Section 4(c), which is identical to rule text within Phlx Options 4A, Section 4(c)(1) and Cboe Rule 4.13 at .09 of Interpretations and Policies, and which follows the Exchange's current practice, does not impose an undue burden on competition. The Reporting Authority is the source of prices of component securities used to calculate the current index level at expiration. The Exchange believes that this proposed rule will provide a transparent reference to the way the Exchange arrives at index options values for settlement where the Exchange's rules may not apply. The addition of this information to the rules will bring greater clarity and transparency to the Exchange's Rules.

Options 4A, Section 12

The Exchange's proposal to amend Options 4A, Section 12(a)(4) concerning European-style options, to reword the current rule text to make clear that the list which follows represents indexes on which options may be listed does not impose an undue burden on competition. The current language does not distinguish between a.m.-settled and p.m.-settled index options. Adding a paragraph describing a p.m.-settled index options²¹ to proposed Options 4A, Section 12(a)(6) will make clear the index within proposed Options 4A, Section 12(a)(6)(i) is p.m.-settled. This p.m.-settled index is part of a pilot program.²² The proposed amendments merely organize the products as either a.m.-settled or p.m.-settled within Options 4A, Section 12 for greater clarity. Rewording current Options 4A, Section 12(d) to remove references to a.m.-

²¹ See note 8 above.

²² See note 9 above.

settled index options does not impose an undue burden on competition as p.m.-settled index options are listed on ISE as well. By removing the phrase, “at the expiration of an A.M.-settled index option” the paragraph would apply to p.m.-settled index options as well, as is the case today.

Technical Amendments

The Exchange’s proposal to amend Options 7, Section 1, General Provisions, to add a “(c)” before certain defined terms to provide a way to cite to that rule text is a non-substantive amendment.

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 Act²³ and subparagraph (f)(6) of Rule 19b-4 thereunder.²⁴

A proposed rule change filed under Rule 19b-4(f)(6)²⁵ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-

²³ 15 U.S.C. 78s(b)(3)(A)(iii).

²⁴ 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.

²⁵ 17 CFR 240.19b-4(f)(6).

4(f)(6)(iii),²⁶ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. As the proposal raises no new or novel issues, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.²⁷

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

²⁶ 17 CFR 240.19b-4(f)(6)(iii).

²⁷ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-ISE-2022-04 on the subject line.

Paper comments:

- Send paper comments in triplicate to Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-ISE-2022-04. 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer

to File Number SR-ISE-2022-04 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.²⁸

J. Matthew DeLesDernier
Assistant Secretary

²⁸ 17 CFR 200.30-3(a)(12).