SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-94773; File No. SR-ISE-2022-10)

April 21, 2022

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing of Proposed Rule Change to Amend ISE Options 4, Section 5, Series of Options Contracts Open for Trading

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 April 11, 2022, 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 amend Options 4, Section 5, "Series of Options Contracts Open for Trading." Specifically, this proposal seeks to amend Supplementary Material .07 to Options 4, Section 5.

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

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the

---

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

2 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 Exchange proposes to amend Options 4, Section 5, "Series of Options Contracts Open for Trading." Specifically, the Exchange proposes to amend Supplementary Material .07 to Options 4, Section 5 to account for conflicts between different provisions within the Short Term Options Series Rules.

In 2021, ISE amended Options 4, Section 5 to limit the intervals between strikes in equity options listed as part of the Short Term Option Series Program, excluding Exchange-Traded Fund Shares and ETNs, that have an expiration date more than twenty-one days from the listing date ("Strike Interval Proposal").[3] The Strike Interval Proposal adopted a new Supplementary Material .07 to Options 4, Section 5 which included a table that intended to specify the applicable strike intervals that would supersede Supplementary Material .03(e)[4] for Short Term

---

3 See Securities Exchange Act Release No. 91930 (May 18, 2021), 86 FR 27907 (May 24, 2021) (SR-ISE-2021-09) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 4, Section 5, ''Series of Options Contracts Open for Trading'' To Limit Short Term Options Series Intervals Between Strikes).

4 Supplementary Material .03(e) of Options 4, Section 5 states, "Strike Interval. During the month prior to expiration of an option class that is selected for the Short Term Option Series Program pursuant to this Rule ("Short Term Option"), the strike price intervals for the related non-Short Term Option ("Related non-Short Term Option") shall be the same as the strike price intervals for the Short Term Option. The Exchange may open for trading Short Term Option Series on the Short Term Option Opening Date that expire on the Short Term Option Expiration Date at strike price intervals of (i) $0.50 or greater where the strike price is less than $100, and $1 or greater where the strike price is between $100 and $150 for all option classes that participate in the Short Term Options Series Program; (ii) $0.50 for option classes that trade in one dollar increments and are in

Option Series in equity options, excluding Exchange-Traded Fund Shares and ETNs, which have an expiration date more than twenty-one days from the listing date. The Strike Interval Proposal was designed to reduce the density of strike intervals that would be listed in later weeks, within the Short Term Options Series Program, by utilizing limitations for intervals between strikes which have an expiration date more than twenty-one days from the listing date.

At this time, the Exchange proposes to amend the rule text within Supplementary Material .07 to Options 4, Section 5 to clarify the current rule text and amend the application of the table to account for potential conflicts within the Short Term Options Series Rules. Currently, the table within Supplementary Material .07 to Options 4, Section 5 is as follows:[5]

the Short Term Option Series Program; or (iii) $2.50 or greater where the strike price is above $150."

5 The Share Price would be the closing price on the primary market on the last day of the calendar quarter and the Average Daily Volume would be the total number of options contracts traded in a given security for the applicable calendar quarter divided by the number of trading days in the applicable calendar quarter The Average Daily Volume would be the total number of options contracts traded in a given security for the applicable calendar quarter divided by the number of trading days in the applicable calendar quarter. Beginning on the second trading day in the first month of each calendar quarter, the Average Daily Volume shall be calculated by utilizing data from the prior calendar quarter based on Customer-cleared volume at The Options Clearing Corporation. For options listed on the first trading day of a given calendar quarter, the Average Daily Volume shall be calculated using the quarter prior to the last trading calendar quarter. See Supplementary Material .07 to Options 4, Section 5.

			Share Price			
Tier	**Average Daily Volume**	**less than $25**	**$25 to less than $75**	**$75 to less than $150**	**$150 to less than $500**	**$500 or greater**
1	Greater than 5,000	$0.50	$1.00	$1.00	$5.00	$5.00
2	Greater than 1,000 to 5,000	$1.00	$1.00	$1.00	$5.00	$10.00
3	0 to 1,000	$2.50	$5.00	$5.00	$5.00	$10.00

The first sentence of Supplementary Material .07 to Options 4, Section 5 provides, "With respect to listing Short Term Option Series in equity options, excluding Exchange-Traded Fund Shares and ETNs, which have an expiration date more than twenty-one days from the listing date, the following table will apply as noted within Supplementary Material .03(e)."

First, the Exchange proposes to amend the first sentence of Supplementary Material .07 to instead provide, "With respect to listing Short Term Option Series in equity options, excluding Exchange-Traded Fund Shares and ETNs, which have an expiration date more than twenty-one days from the listing date, the following table, *which specifies the applicable interval for listing*, will apply as noted within Supplementary Material .03(*f*)." The table within Supplementary Material .07 provides for the listing of intervals based on certain parameters (average daily volume and share price). The Exchange proposes to add the phrase "which specifies the applicable interval for listing" to make clear that the only permitted intervals are as specified in the table within Supplementary Material .07, except in the case where Supplementary Material .03(e) provides for a greater interval as described in more detail below.

Second, the Exchange proposes to amend the first sentence of Supplementary Material .07 to cite to Supplementary Material .03(f)[6] instead of .03(e)[7] as paragraph (f) indicates when the table within Supplementary Material .07 applies.

Third, the Exchange proposes to add a new sentence within Supplementary Material .07 to Options 4, Section 5 which states, "To the extent there is a conflict between applying Supplementary Material .03(e) and the below table, the greater interval would apply." Today, there are instances where a conflict is presented as between the application of the table within Supplementary Material .07 and the rule text within Supplementary Material .03(e) with respect to the correct interval. Adding the proposed sentence would make clear to Members the applicable intervals where there is a conflict between the rule text within Supplementary Material .07 and the rule text within Supplementary Material .03(e), thereby providing certainty as to the outcome. The Exchange proposes to insert the words "greater than" because it proposes to permit Supplementary Material .03(e) of Options 4, Section 5 to govern only in the event that

6 Supplementary Material .03(f) of Options 4, Section 5 provides, "Notwithstanding (e) above, when Short Term Options Series in equity options, excluding Exchange-Traded Funds ("ETFs") and ETNs, have an expiration more than twenty-one days from the listing date, the strike interval for each options class shall be based on the table within Supplementary Material .07."

7 Supplementary Material .03(e) of Options 4, Section 5, provides, "Strike Interval. During the month prior to expiration of an option class that is selected for the Short Term Option Series Program pursuant to this Rule ("Short Term Option"), the strike price intervals for the related non-Short Term Option ("Related non-Short Term Option") shall be the same as the strike price intervals for the Short Term Option. The Exchange may open for trading Short Term Option Series on the Short Term Option Opening Date that expire on the Short Term Option Expiration Date at strike price intervals of (i) $0.50 or greater where the strike price is less than $100, and $1 or greater where the strike price is between $100 and $150 for all option classes that participate in the Short Term Options Series Program; (ii) $0.50 for option classes that trade in one dollar increments and are in the Short Term Option Series Program; or (iii) $2.50 or greater where the strike price is above $150."

the interval would be greater. The same analysis would not be conducted where the result would be a lesser interval. By way of example,

Example 1: Assume a Tier 1 stock that closed on the last day of Q1 with a quarterly share price less than $150. Next, assume during Q2 the share price rose above $150. Utilizing the table within Supplementary Material .07, the interval would be $1.00 even though the price rose above $150 because the Share Price was calculated utilizing data from the prior calendar quarter. Utilizing Supplementary Material .03(e), the interval would be $2.50 if the price rose above $150. The greater interval would then be $2.50 as per Supplementary Material .03(e) in this scenario. Therefore, the following strikes would be eligible to list: $152.5 and $157.5. For strikes less than $150, the following strikes would be eligible to list: $149 and $148 because Short Term Options Series with expiration dates more than 21 days from the listing date as well as Short Term Options Series with expiration dates less than 21 days from the listing date would both be eligible to list $1 intervals pursuant to Supplementary Material .07 and Supplementary Material .03(e) of Options 5, Section 4.

Example 2: Assume a Tier 2 stock that closed on the last day of Q1 with a quarterly share price less than $25. Next, assume during Q2 the share price rose above $100. Utilizing the table within Supplementary Material .07 the interval would be $1.00 even though the price rose above $100 because the Share Price was calculated utilizing data from the prior calendar quarter. Utilizing Supplementary Material .03(e), the interval would be $1.00 if the price rose above $100. The $1 interval is the same in both cases in this scenario and therefore there is no conflict. Now assume during the quarter the price rose above $150. Utilizing the table within Supplementary Material .07, the interval would continue to be $1.00 because the Share Price relied on data from the prior calendar quarter, however, pursuant to Supplementary Material

.03(e), the interval would be $2.50. The greater interval would then be $2.50 as per Supplementary Material .03(e) in this scenario.

Example 3: Assume a Tier 3 stock that closed on the last day of Q1 with a quarterly share price less than $25. Next, assume during Q2 the share price rose above $100. Utilizing the table within Supplementary Material .07 the interval would be $2.50 even though the price rose above $100 because the Share Price relied on data from the prior calendar quarter. Utilizing Supplementary Material .03(e), the interval would be $1.00 if the price rose above $100. The greater interval would then be $2.50 as per the table in Supplementary Material .07 in this scenario.

Fourth, the Exchange proposes to delete the last sentence of the first paragraph of Supplementary Material .07 to Options 4, Section 5 which states, "The below table indicates the applicable strike intervals and supersedes Supplementary Material .03(d) which permits additional series to be opened for trading on the Exchange when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the market price of the underlying security moves substantially from the exercise price or prices of the series already opened." The table within Supplementary Material .07 impacts strike intervals, while Supplementary Material .03(d)[8] describes adding series of options. The table within Supplementary Material .07 supersedes other rules pertaining to strike intervals, but the table does not supersede rules governing the addition of options series. Therefore, the table within

8 Supplementary Material .03(d) of Options 5, Section 4 provides, "Additional Series. If the Exchange opens less than thirty (30) Short Term Option Series for a Short Term Option Expiration Date, additional series may be opened for trading on the Exchange when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the market price of the underlying security moves substantially from the exercise price or prices of the series already opened."

Supplementary Material .07 and Supplementary Material .03(d) do not conflict with each other. Deleting the reference to Supplementary Material .03(d) will avoid confusion.

Fifth, and finally, the Exchange provides within the last sentence of Supplementary Material .07 to Options 4, Section 5 that, “Notwithstanding the limitations imposed by Supplementary Material .07, this proposal does not amend the range of strikes that may be listed pursuant to Supplementary Material .03, regarding the Short Term Option Series Program.” The Exchange proposes to remove this rule text. While the range limitations continue to be applicable to the table within Supplementary Material .07, the strike ranges do not conflict with strike intervals and therefore the sentence is not necessary. Removing the last sentence of Supplementary Material .07 to Options 4, Section 5 will avoid confusion. Also, the rule text within Supplementary Material .03(f) of Options 5, Section 4 otherwise indicates when Supplementary Material .07 would apply.

Implementation

The Exchange proposes to implement this rule change on August 1, 2022. The Exchange will issue an Options Trader Alert to notify Members of the implementation date.

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 investors and the public interest. The Strike Proposal continues to limit the intervals between

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

strikes listed in the Short Term Options Series Program that have an expiration date more than twenty-one days.

The Exchange's proposal to add clarifying language to the first sentence of Supplementary Material .07 of Options 4, Section 5, is consistent with the Act because it will make clear that the only permitted intervals are as specified in the table within Supplementary Material .07, except in the case where Supplementary Material .03(e) provides for a greater interval. This amendment will bring greater transparency to the rule.

Amending the first sentence of Supplementary Material .07 to cite to Supplementary Material .03(f) instead of .03(e) is consistent with the Act because paragraph (f) indicates when the table within Supplementary Material .07 applies.

Adopting a new sentence within Supplementary Material .07 of Options 4, Section 5 to address a potential conflict between the Short Term Options Series Program rules, specifically as between the application of the table within Supplementary Material .07 and the rule text within Supplementary Material .03(e), with respect to the correct interval is consistent with the Act. The table within Supplementary Material .07 supersedes other strike interval rules, but does not supersede the addition of option series. Therefore, these rules do not conflict with the table. Deleting the reference to Supplementary Material .03(d) will avoid confusion. This new rule text will make clear to Members the applicable intervals when there is a conflict between the rule text within Supplementary Material .07 and the rule text within Supplementary Material .03(e), thereby providing certainty as to the outcome. The proposed new rule text promotes just and equitable principles of trade by adding transparency to the manner in which ISE implements its listing rules, and protects investors and the general public by removing uncertainty.

Removing the last sentence of the first paragraph of Supplementary Material .07 to Options 4, Section 5 is consistent with the Act because the table within Supplementary Material .07 impacts strike intervals, while Supplementary Material .03(d) describes the addition of options series. The table within Supplementary Material .07 supersedes other rules pertaining to strike intervals, but the table does not supersede rules governing the addition of options series. Therefore, the table within Supplementary Material .07 and Supplementary Material .03(d) do not conflict with each other. Deleting the reference to Supplementary Material .03(d) will avoid confusion.

Removing the last sentence of Supplementary Material .07 to Options 4, Section 5 is consistent with the Act because while the range limitations continue to be applicable, the strike ranges do not conflict with strike intervals, rendering the sentence unnecessary. Removing the last sentence of Supplementary Material .07 to Options 4, Section 5 will avoid confusion. Also, the rule text within Supplementary Material .03(f) of Options 5, Section 4 otherwise indicates when Supplementary Material .07 would apply.

The Strike Interval Proposal was designed to reduce the density of strike intervals that would be listed in later weeks, within the Short Term Options Series Program, by utilizing limitations for intervals between strikes which have an expiration date more than twenty-one days from the listing date. The Exchange's proposal intends to continue to remove certain strike intervals where there exist clusters of strikes whose characteristics closely resemble one another and, therefore, do not serve different trading needs,[11] rendering these strikes less useful. Also, the Strike Interval Proposal continues to reduce the number of strikes listed on ISE, allowing

[11] For example, two strikes that are densely clustered may have the same risk properties and may also be the same percentage out-of-the money.

Lead Market Makers and Market Makers to expend their capital in the options market in a more efficient manner, thereby improving overall market quality on ISE.

Additionally, by making clear that the greater interval would control as between the rule text within Supplementary Material .07 and the rule text within Supplementary Material .03(e), the Exchange is reducing the number of strikes listed in a manner consistent with the intent of the Strike Interval Proposal, which was to reduce strikes which were farther out in time. The result of this clarification is to select wider strike intervals for Short Term Option Series in equity options which have an expiration date more than twenty-one days from the listing date. This rule change would harmonize strike intervals as between inner weeklies (those having less than twenty-one days from the listing date) and outer weeklies (those having more than twenty-one days from the listing date) so that strike intervals are not widening as the listing date approaches.

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 that is not necessary or appropriate in furtherance of the purposes of the Act. The Strike Interval Proposal continues to limit the number of Short Term Options Series Program strike intervals available for quoting and trading on ISE for all ISE Participants.

Adding clarifying language to the first sentence of Supplementary Material .07 of Options 4, Section 5 to make clear which parameter the table within Supplementary Material .07 of Options 4, Section 5 amends within the Short Term Options Series Program will bring greater transparency to the rules. Amending the first sentence of Supplementary Material .07 to cite to Supplementary Material .03(f) instead of .03(e) does not impose an undue burden on competition because paragraph (f) indicates when the table within Supplementary Material .07 applies. Adopting a new sentence to address potential conflicts as between the rule text within Supplementary Material .07 and the rule text within Supplementary Material .03(e) of Options 4, Section 5, within the Short Term Options Series Program, will bring greater transparency to the manner in which ISE implements its listing rules. The table within Supplementary Material .07 impacts strike intervals, while Supplementary Material .03(d) describes adding series of options. The table within Supplementary Material .07 supersedes other strike interval rules, but does not supersede the addition of series. Removing the last sentence of the first paragraph of Supplementary Material .07 to Options 4, Section 5 does not impose an undue burden on competition because the table within Supplementary Material .07 supersedes other rules pertaining to strike intervals, but the table does not supersede rules governing the addition of options series. Also, deleting the reference to Supplementary Material .03(d) will avoid confusion. Finally, removing the last sentence of Supplementary Material .07 to Options 4, Section 5 will remove any potential confusion. While the range limitations continue to be applicable, the strike ranges do not conflict with strike intervals and are not necessary.

While this proposal continues to limit the intervals of strikes listed on ISE, the Exchange continues to balance the needs of market participants by continuing to offer a number of strikes to meet a market participant's investment objective. The Exchange's Strike Interval Proposal does not impose an undue burden on inter-market competition as this Strike Interval Proposal does not impact the listings available at another self-regulatory organization.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be 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
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-ISE-2022-10 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-2022-10. 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-2022-10, 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.[12]

J. Matthew DeLesDernier
Assistant Secretary

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