1. Text of the Proposed Rule Change

(a) Nasdaq ISE, LLC ("ISE" or "Exchange"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] is filing with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule to amend various options rules to: (1) further define a Stop Order and Stop Limit Order at Options 3, Section 7(d) and (e); (2) amend the treatment of responses in the Facilitation Mechanism in Options 3, Section 11(b), Solicited Order Mechanism in Options 3, Section 11(d) and Price Improvement Mechanism ("PIM") in Options 3, Section 13 and clarify how multiple responses are treated; (3) add a Cancel-Replacement Complex Order to Options 3, Section 14(b)(20); (4) describe the application of the Order Price Protection to Stop-Limit Orders at Options 3, Section 15(a)(1)(A), amend the parameters for the Market Wide Risk Protection at Options 3, Section 15(a)(1)(C), and amend the Acceptable Trade Range at Options 3, Section 15(a)(2)(A); (5) remove references to index options on the Nasdaq 100 Reduced Value Index; (6) remove obsolete rule text regarding port fees in Options 7, Section 7; and (7) make various other non-substantive and technical amendments.

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1.

The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

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

2 17 CFR 240.19b-4.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors (the "Board"). Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

Questions and comments on the proposed rule change may be directed to:

Angela Saccomandi Dunn
Principal Associate General Counsel
Nasdaq, Inc.
215-496-5692

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

a. Purpose

The Exchange proposes to amend various Options 3, Options Trading Rules: Section 7, Types of Orders and Order and Quote Protocols; Section 11, Auction Mechanisms; Section 13, Price Improvement Mechanism for Crossing Transactions; Section 14, Complex Orders; Section 15, Simple Order Risk Protections; Section 22, Limitations on Order Entry; and Section 23, Data Feeds and Trade Information. The Exchange also proposes to amend various Options 4A, Options Index Rules: Section 2, Definitions; Section 6, Position Limits for Broad-Based Index Options; and Section 12, Terms of Index Options Contracts. The Exchange proposes to amend Options 5, Section 4, Order Routing, and Options 7, Pricing Schedule. Each change will be described below.

Options 3, Section 7

The Exchange proposes to add an additional sentence to Options 3, Section 7(d) related to a Stop Order. Today, Options 3, Section 7(d) provides,

> A stop order is an order that becomes a market order when the stop price is elected. A stop order to buy is elected when the option is bid or trades on the Nasdaq ISE at, or above, the specified stop price. A stop order to sell is elected when the option is offered or trades on the Nasdaq ISE at, or below, the specified stop price. A Stop Order shall be cancelled if it is immediately electable upon receipt. Stop Orders may only be entered through FIX or Precise.

Today, a Stop Order is not elected by a trade that is reported late or out-of-sequence or by a Complex Order trading with another Complex Order. The purpose of this provision is to ensure systemically that a Stop Order would be elected on the Exchange by the execution price at the actual time of the execution, instead of at the time of a late or out-of-sequence report or a trade that is outside the NBBO in the case of a complex order. Absent this provision, it would be possible for a Stop Order to be elected by a trade that is reported late or out-of-sequence or a trade that is outside the NBBO in the case of a complex order, which could result in such Stop Order being converted into a Market Order or a Limit Order and, in the case of a Stop Order executed at a significantly different price than the election price of the Stop Order.[3] For these reasons, a similar sentence would also be added to Options 3, Section 7(e) related to a Stop Limit Order. The Exchange proposes to make clear what would elect a Stop Order or a Stop Limit Order in its rules so that Members may anticipate that a late, out-of-sequence report, or a trade that is outside the NBBO in the case of a Complex Order, would not cause a Stop Order or Stop Limit Order to be elected. Today, Nasdaq Phlx LLC ("Phlx") notes this behavior with respect to its Stop Order.[4]

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3 For example, if a Stop Order to sell at $3.00 is elected by a trade reported late or out-of-sequence with an execution price of $3.00 when the actual bid price at the time of the report is $1.00, the Stop Order would be converted into a market order and executed at $1.00.

4 See Phlx Options 3, Section 7(b)(4). Phlx's current Stop Order applies to Stop limit orders as well as noted in Options 3, Section 7(b)(4)(A).

The Exchange proposes to amend Legging Orders at Options 3, Section 7(k). Specifically, similar to Nasdaq MRX, LLC ("MRX") Options 3, Section 7(k), the Exchange proposes to amend the Legging Order type to provide the word "other" within Options 3, Section 7(k)(1) and Options 3, Section 7(k)(4) as intended by the language in a prior rule change[5] which noted in the addition of "other" within the rule text. The Exchange inadvertently did not mark the rule text correctly in that prior rule change and is correcting that error.

Auction Responses

The Exchange proposes to amend the Facilitation Mechanism at Options 3, Section 11(b)(3), the Solicited Order Mechanism at Options 3, Section 11(d)(2), and the Price Improvement Mechanism ("PIM") in Options 3, Section 13(c)(2) to amend the current System behavior with respect to the handling of Response and Improvement Orders. Today, a Response or Improvement Order must be equal to or better than the displayed NBBO on both sides of the market at the time of receipt of the Response or Improvement Order in both the Facilitation Mechanism and the Solicited Order Mechanism, as well as in a PIM. While the current rules do not make this clear, this represents the Exchange's current practice.

Specifically, the Exchange proposes to amend the System behavior to permit a response to these auctions to be entered at a price that is equal to or better than the better of the internal BBO or the NBBO on the same side of the market at the start of the auction and on the opposite side of the market at the time the Response is received.

[5] See Securities Exchange Act Release No. 99092 (December 6, 2023), 88 FR 86162, 86163-86164 and 86167 (December 12, 2023) (SR-ISE-2023-31) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Legging Orders).

Utilizing the price of the market at the start of the auction, for the same side check, would prevent an order or quote from potentially manipulating the final auction price by changing the internal BBO/NBBO while not fully satisfying the Agency Order, thus preventing Responses or Improvement Orders from being entered at a price that improves the stop price of the auction, but remains inferior to the price of such initial order or quote. In contrast, for the opposite side check, it is not necessary to use the price of the market at the time of the start of the auction because potential manipulation cannot occur on the opposite side check as the NBBO cannot be updated on the same side by submitting interest into the auction. The proposed amendment is intended to prevent potential auction manipulation which can occur when an order/quote is entered at a price that improves the price of the order to be facilitated, Agency Order or Crossing Transaction.

The Exchange proposes to amend the current rule because, in certain cases, the current rule prevents other responses to that auction to be entered at a price that improves the price of the order to be facilitated, Agency Order or Crossing Transaction, but is inferior to such other quote/order responses which improved upon the internal BBO or NBBO. By way of example, during an auction, once an order or quote is received on the opposite side of the PIM, Facilitation, or Solicitation Agency Order which is marketable with the Agency Order, it changes the internal BBO and potentially the NBBO. If such initial order or quote does not comprise enough size to fully satisfy the PIM, Facilitation, or Solicitation Agency Order, since it has changed the internal BBO/NBBO, it now prevents Responses or Improvement Orders which improve the stop price of the auction from being entered at a price that is inferior to the initial order or quote, despite such initial order or quote's inability to satisfy the full volume of the Agency Order at an improved price. By utilizing the better of the internal BBO or the NBBO at the start of the relevant auction, the Exchange believes that better priced responses would be permitted to trade with the order to be facilitated, Agency Order or Crossing Transaction. Today, those better priced responses would be rejected. The proposed amendments would allow orders to be facilitated, and the Agency Order or Crossing Transaction to potentially trade at improved prices.

Below are examples of this functionality change.

Example 1

Internal BBO – \$1.15 x \$1.30

NBBO – \$1.10 x \$1.35

PIM Order to sell is entered with Customer on Agency side selling 100 contracts with a stop price of \$1.18.

Order 1 is entered to Buy 1 @ \$1.25 – accepted based on market at start of auction \$1.15 x \$1.30.

Auction response 1 is entered to Buy 100 @ \$1.20 – With entry check modification, accepted based on market at start of auction \$1.15 x \$1.30.

Under current system entry checks, PIM Auction response 1 would be rejected because the system would look at the market of \$1.25 x \$1.30, and the PIM Auction would conclude after the timer has run the full 100 milliseconds and partially trade with Order 1 at \$1.25 and with a final auction price of \$1.18. The remainder of the Agency Order would trade with the contra-side order at \$1.18.

Under new system entry checks, the PIM Auction would conclude and partially trade with Order 1 at \$1.25 and then trade the remainder of the Agency Order at a price of \$1.20 based off of the acceptance of Auction Response 1.

Example 2

Internal BBO – \$23.90 x \$28.50

NBBO – \$23.90 x \$28.50 (Singly listed on ISE)

PIM Order to sell is entered with Customer on Agency selling 100 contracts with an Agency Order price of $26.20.

Quote is entered to buy 1 contract @ $27.40 (updating NBBO to $27.40 x $28.50)

Auction Response 1 is entered to Buy 100 @ $26.72 – With entry check modification, accepted based on market at start of auction $23.90 x $28.50.

Under current system entry checks, Auction response 1 would be rejected because the system would look at the market of $27.40 x $28.50, and the PIM Auction would conclude after the timer has run the full 100 milliseconds and partially trade with quote @ $27.40 and with contra at a final auction price of $26.20.

Under new system entry checks, the PIM Auction would conclude and partially trade with quote @ $27.40 and with Auction Response and contra (assuming the contra elected to automatically match the response) at a final auction price of $26.72 based off of the acceptance of Auction Response 1.

The Exchange is not amending Options 3, Section 13(b)(3) because the same side of the market entry check currently conforms to Phlx Options 3, Section 13(a)(3) which requires that on the same side of the market as the PIXL Order, the better of: (i) the Reference BBO price improved by at least $0.01, (ii) the PIXL Order's limit price (if the order is a Limit Order), or (iii) equal to or better than the NBBO. In harmonizing its auction rules, the Exchange is conforming to Phlx PIXL entry checks. Currently, on Phlx, if the PIXL Order is for a Non-Public Customer, the PIXL Order must also be better than any quote on the same side of the market as the PIXL Order. Priority Customers may start a PIM Auction equal to a quote as these market participants would have priority over all other market participants if a Priority were to submit an order to the order book. In contrast, a broker dealer or any other person or entity that is not a Priority would not have this priority with respect to a Market Maker quote. The Exchange's current rule text at Options 3, Section 13(b)(3) is the same as Phlx Options 3, Section 13(a)(3).

Options 3, Section 11

The Exchange proposes two technical amendments to Options 3, Section 11, Auction Mechanisms, at paragraph (g). First the Exchange proposes to correct a citation to Options 11, Section 13(e); the correct citation is Options 3, Section 13(e). Second, the Exchange proposes to remove a citation to Options 3, Section 13(e)(4)(vi), which does not exist in the rules as it was removed in a 2022 rule change.[6] The Exchange proposes to correct a citation in Options 3, Section 11(e)(4)(D) which currently cites to Options 3, Section 15. The correct citation is to Options 3, Section 10.

Options 3, Section 13

The Exchange proposes to amend Options 3, Section 13(b)(1) and (2) to align its entry check with Phlx Options 3, Section 13, Price Improvement XL ("PIXL") entry checks.[7] Specifically, the Exchange proposes to amend its entry check where the PIM Agency Order is for less than 50 option contracts, and if the difference between the National Best Bid and National Best Offer ("NBBO") or the difference between the internal best bid and the internal best offer is $0.01; currently, the Crossing Transaction

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6 See Securities Exchange Act Release No. 96518 (December 16, 2022), 87 FR 78740 (December 22, 2022) (SR-ISE-2022-28) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Certain ISE Complex Order Functionalities in Connection With a Technology Migration).

7 Today, Phlx Options 3, Section 13(b)(3) PIXL entry checks for the account of a broker dealer or any other person or entity that is not a Public Customer for orders of 50 contracts or more are the same checks that are currently in place at Phlx Options 3, Section 13(a)(3) for the account of a broker dealer or any other person or entity that is not a Public Customer for orders of 50 contracts or more. Phlx's current rule text defines the "internal PBBO" as the "Reference BBO" at Options 3, Section 13(a)(3)(A). Phlx's same side entry check for the account of a broker dealer or any other person or entity that is not a Public Customer for orders of 50 contracts or more, requires the Reference PBBO price to be improved by at least $0.01 which is analogous to requiring a PIXL Order's quote to be better than the same side of the market as the PIXL Order, similar to ISE's entry check for this category of PIM Order. Of note, Phlx will separately amend its rule text at Options 3, Section 13(a)(3) to align that rule text with ISE, GEMX and MRX Options 3, Section 13(b)(3).

must be entered at a price that is: $0.01 better than the NBBO and the internal BBO on the opposite side of the market from the Agency Order and on the same side of the market as the Agency Order, (i) equal to or better than the NBBO and (ii) better than any Limit Order or quote on the ISE order book. At this time, the Exchange proposes to instead provide that where a PIM Agency Order is for less than 50 option contracts, and if the difference between the NBBO or the difference between the internal best bid and the internal best offer is $0.01, the Crossing Transaction must be entered at a price that is: on the same side of the market as the Agency Order, (i) equal to or better than the NBBO and (ii) *better than any Limit Order on the Limit Order book. If the Agency Order is for a Non-Priority Customer, the Agency Order must also be better than any quote on the same side of the market as the Agency Order*. Today, Phlx Options 3, Section 13(a)(1)(B)(ii) has this identical entry check. With this proposed change, if the Agency Order is for less than 50 option contracts, and if the difference between the NBBO or the difference between the internal best bid and the internal best offer is $0.01, the Initiating Member must stop the entire Agency Order at a price that is on the same side of the market as the Agency Order, equal to or better than the NBBO[8] and better than any Limit Order on the Limit Order Book. The Exchange is removing the check against the quote for Priority Customers, similar to Phlx. If the Agency Order is for a Non-Priority Customer, the Agency Order must also be better than any quote on the same side of the market as the Agency Order. The System will check if the Agency Order is better than

[8] For example, if the market is 0.98 bid and 0.99 offer, a Priority Customer Agency Order to buy for less than 50 contracts must be stopped at 0.98 cents in this scenario to be accepted into a PIM Auction, provided there is no resting order or quote on the Limit Order book at 0.98 in which case the Agency Order would be rejected.

any quote on the same side of the market as the Agency Order if the Agency Order is for a Non-Priority Customer.

Additionally, the Exchange proposes to amend ISE Options 3, Section 13(b)(2)(B)(i). Currently, Options 3, Section 13(b)(2)(B)(i) provides if an Agency Order is for the account of a Priority Customer, and such order is for 50 option contracts or more, or if the difference between the NBBO or the difference between the internal BBO is greater than $0.01, a Crossing Transaction must be entered only at a price that is: (A) equal to or better than the internal BBO and NBBO on the opposite side of the market from the Agency Order, and (B) on the same side of the market as the Agency Order, (i) at least $0.01 better than any Limit Order or quote on the ISE order book, and (ii) equal to or better than the NBBO. At this time, the Exchange proposes to amend the same side prong of the entry check to require if an Agency Order is for the account of a Priority Customer, and such order is for 50 option contracts or more, or if the difference between the NBBO or the difference between the internal BBO is greater than $0.01, a Crossing Transaction must be entered only at a price that is: on the same side of the market as the Agency Order, (i) at least $0.01 better than any Limit Order on the Limit Order Book, and (ii) equal to or better than the NBBO which is identical to Phlx Options 3, Section 13(a)(2)(B)(iii). The eligibility requirements if the Agency Order is for the account of a Priority Customer and such order is for 50 option contracts or more should provide a meaningful opportunity for price improvement, and thereby benefit investors and others in a manner that is consistent with the Act.

The Exchange proposes to amend Options 3, Section 13(c) to add language regarding Improvement Orders in a PIM Auction. Today, multiple Improvement Orders from the same Member may be submitted during the Auction. Multiple Improvement Orders at a particular price point submitted by a Member in response to an exposure period may not exceed, in the aggregate, the size of the Crossing Transaction. However, a Member using the same badge[9]/mnemonic[10] may only submit a single Improvement Order per auction ID for a given auction. If an additional Improvement Order is submitted for the same auction ID from the same badge/mnemonic, then that Improvement Order will automatically replace the previous Improvement Order. The Exchange proposes to make clear in its rules that it would not allow Members to submit multiple Improvement Orders using the same badge/mnemonic and would also not aggregate all of those Improvement Orders at the same price. The Exchange proposes to make clear that additional Improvement Orders from the same badge/mnemonic for the same auction ID will automatically replace the previous Improvement Orders. This foregoing handling of Improvement Orders is consistent with the current System handling of Improvement Orders.

Options 3, Section 14

The Exchange proposes to define a Cancel-Replacement Complex Order within Options 3, Section 14(b)(20). Today, Options 3, Section 7(f) described a single-leg Cancel-Replacement Order as follows:

> Cancel and Replace Orders shall mean a single message for the immediate cancellation of a previously received order and the replacement of that order with a new order. If the previously placed order is already filled partially or in its entirety, the replacement order is automatically canceled

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9 A "badge" shall mean an account number, which may contain letters and/or numbers, assigned to Market Makers. A Market Maker account may be associated with multiple badges. See Options 1, Section 1(a)(5).

10 A "mnemonic" shall mean an acronym comprised of letters and/or numbers assigned to Electronic Access Members. An Electronic Access Member account may be associated with multiple mnemonics. See Options 1, Section 1(a)(23).

> or reduced by the number of contracts that were executed. The replacement order will retain the priority of the cancelled order, if the order posts to the Order Book, provided the price is not amended or size is not increased. In the case of Reserve Orders, the replacement order will retain the priority of the cancelled order, if the order posts to the Order Book, provided the price is not amended or size (displayed and non-displayed) is not changed. If the replacement portion of a Cancel and Replace Order does not satisfy the System's price or other reasonability checks (e.g. Options 3, Section 15(a)(1)(A) and (a)(1)(B); and Options 3, Section 16(a)(1), (b) and (c)(1)) the existing order shall be cancelled and not replaced.

Today, the Exchange permits Members to cancel and replace a Complex Order within a single message, but does not list the order type in Options 3, Section 14.[11] The Exchange proposes to add the order type at Options 3, Section 14(b)(20) and provide,

> Cancel-Replacement Complex Orders shall mean a single message for the immediate cancellation of a previously received Complex Order and the replacement of that Complex Order with a new Complex Order. If the previously placed Complex Order is already filled partially or in its entirety, the replacement Complex Order is automatically canceled or reduced by the number of contracts that were executed. The replacement Complex Order will retain the priority of the cancelled Complex Order, if the order posts to the Complex Order Book, provided the price is not amended or size is not increased.

The proposed rule text is identical to the rule text for a single-leg order in Options 3, Section 7(f) except that: (1) Reserve Orders are not described, because there are no reserve complex orders; (2) single-leg risk protections do not apply to Complex Orders; and (3) protections for the legs of a Complex Order are described in Options 3, Section 7(f) which relates to the single-leg order book.

This order type offers Members the ability to cancel and replace a Complex Order in a single message as compared to entering two separate orders, which some Members may find more efficient. If the previously placed Complex Order is already filled

[11] See ISE Options 3, Section 7(f).

partially or in its entirety, the replacement Complex Order is automatically canceled or reduced by the number of contracts that were executed. Similar to single-leg orders, the replacement Complex Order will retain the priority of the cancelled Complex Order, if the order posts to the Complex Order Book[12], provided the price is not amended or size is not increased. If the price is amended, or the size is increased, the replacement Complex Order will result in a loss in priority. Adding the order to the list of order types in Options 3, Section 14 makes clear that the order type is available for Complex Orders, in addition to single-leg orders. Also, the rule text makes clear the manner in which priority of the replacement Complex Order is retained in the System thereby memorializing the manner in which a Cancel-Replacement Complex Order is handled today by the System.

The Exchange proposes to amend certain rule citations in Options 3, Section 14, Complex Orders, to add the correct citation. Citations to Options 3, Section 22(d) should be to "b" and citations to Options 3, Section 22(e) should be to "c". Options 3, Section 22(b) refers to Limitation on Principal Transactions.[13] Options 3, Section 22(c) refers to

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12 The concept of priority is only relevant to resting orders on the Order Book or Complex Order Book as it relates to other resting orders when incoming orders trade with those resting orders. If an order is cancelled and then replaced in a way where that order becomes eligible to trade right away, the priority rules do not apply as that order immediately trades and ceases to exist unless volume remains, in which case the remainder does "post to the Complex Order Book" and priority becomes relevant.

13 Electronic Access Members may not execute as principal orders they represent as agent unless (i) agency orders are first exposed on the Exchange for at least one (1) second, (ii) the Electronic Access Member has been bidding or offering on the Exchange for at least one (1) second prior to receiving an agency order that is executable against such bid or offer, or (iii) the Member utilizes the Facilitation Mechanism pursuant to Options 3, Section 11(b) and (c); (iv) the Member utilizes the Price Improvement Mechanism for Crossing Transactions pursuant to Options 3, Section 13; (v) the Member utilizes Qualified Contingent Cross Orders pursuant to Options 3, Section 12(c) and (d); (vi) the Member utilizes a Customer Cross Order pursuant to Options 3, Sections 12(a) or (b); or (vii) the Member utilizes a Complex Order Exposure pursuant to Supplementary Material .01 to Options 3, Section 14. Electronic Access Members may not execute as principal orders they represent as agent within the Solicitation Mechanism pursuant to Options 3, Section 11(d) and (e). See Options 3, Section 22(b).

limitations on Solicitation Orders.[14]

Options 3, Section 15

The Exchange proposes to amend Options 3, Section 15(a)(1)(A) to note that the Order Price Protection ("OPP") does not apply to Stop Limit Orders until elected. Because a Stop Order does not execute upon entry, and instead rests in the System until the market reaches a certain price level, at which time the order could be executed, the Exchange does not apply the OPP protection to this order type upon its receipt. Once the Stop Limit Order is elected, the Exchange checks the Limit Order against the OPP bounds. The Exchange proposes to amend the OPP language to make clear to Members that a Stop Limit Order does not trigger OPP since OPP is a risk protection that activates when the limit price of an order is too far through the contra-side BBO. In this case, since Stop Limit Orders do not have a limit price until they are elected, OPP could not apply until the contingency is satisfied. The rule text makes clear to Members when OPP will apply to a Stop Limit Order so that Members understand the System handling.

The Exchange proposes to amend Options 3, Section 15(a)(1)(C) to align the rule text of ISE's Market Wide Risk Protection with the Market Wide Risk Protection in MRX Options 3, Section 15(a)(1)(C). MRX filed a rule change[15] to adopt similar rules

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[14] Electronic Access Members may not execute orders they represent as agent on the Exchange against orders solicited from Members and non-Member broker-dealers to transact with such orders unless (i) the unsolicited order is first exposed on the Exchange for at least one (1) second, (ii) the Member utilizes the Solicited Order Mechanism pursuant to Options 3, Section 11(e), (iii) the Member utilizes the Facilitation Mechanism pursuant to Options 3, Section 11(d); (iv) the Member utilizes the Price Improvement Mechanism for Crossing Transactions pursuant to Options 3, Section 13; (v) the Member utilizes Qualified Contingent Cross Orders pursuant to Options 3, Section 12(c) and (d); (vi) the Member utilizes a Customer Cross Order pursuant to Options 3, Sections 12(a) or (b); or (vii) the Member utilizes a Complex Order Exposure pursuant to Supplementary Material .01 to Options 3, Section 14. See Options 3, Section 22(c).

[15] See Securities Exchange Act Release No. 97726 (June 14, 2023), 88 FR 40344 (June 21, 2023) (SR-MRX-2023-10) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Complex Order Rules) ("MRX-2023-10").

related to Market Wide Risk Protection on ISE. Within that rule change, MRX amended the rule text that it was copying from ISE.[16] At this time, to harmonize the rule text, which reflects identical functionality, the Exchange proposes to add rule text related to the defined term "Complex Options Order" and "entered into the complex order book" to align the two rules. Today, the Market Wide Risk Protection counting programs maintain separate counts over rolling time period for the total number of orders entered in the regular order book, complex order book with only options legs, and the complex order book with both stock and options legs. Additionally, the risk protection counts the total number of contracts traded in regular orders and Complex Orders with only options legs.[17] MRX-2023-10 noted that it proposed to mirror the rules of ISE Options 3, Section 15(a)(1)(C) within (2) through (5) except that the rules will use the defined terms Stock-Option Order, Stock-Complex Order, and Complex Option Order.[18] MRX noted that ISE would make a similar change to utilize the defined terms "Stock-Option Order,"[19]

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16 Id.

17 The Member's allowable order rate for the Order Entry Rate Protection is comprised of the parameters defined in (1) to (3), while the allowable contract execution rate for the Order Execution Rate Protection is comprised of the parameters defined in (4) and (5).

18 See MRX-2023-10 at footnote 54.

19 A Stock-Option Strategy is the purchase or sale of a stated number of units of an underlying stock or a security convertible into the underlying stock ("convertible security") coupled with the purchase or sale of options contract(s) on the opposite side of the market representing either (A) the same number of units of the underlying stock or convertible security, or (B) the number of units of the underlying stock necessary to create a delta neutral position, but in no case in a ratio greater than eight-to-one (8.00), where the ratio represents the total number of units of the underlying stock or convertible security in the option leg to the total number of units of the underlying stock or convertible security in the stock leg. See Options 3, Section 14(a)(2).

"Stock-Complex Order"[20] and "Complex Option Order,"[21] which change is being made herein to utilize these terms as appropriate. The Exchange notes that the stock portion of QCC Orders, Complex Qualified QCC Orders, QCC with Stock Orders, and Complex QCC with Stock Orders are not counted in provision (3) because ISE's System does not handle the stock portion of these orders. ISE represents the stock leg through NES as it does for other Stock-Option Orders and Stock-Complex Orders. QCC Orders, Complex Qualified QCC Orders, QCC with Stock Orders, and Complex QCC with Stock Orders are considered, where applicable, in Options 3, Section 15(a)(1)(C)(1), (2), (4) and (5).

Also, the Exchange also proposes to amend Options 3, Section 15(a)(1)(C)(iii) to correct a citation to a subparagraph in that rule. The Exchange proposes to amend a citation to "(b)(1)(D)" to "(ii)."

The Exchange proposes to amend Options 3, Section 15(a)(2)(A), Acceptable Trade Range. Today, the Exchange's System calculates an Acceptable Trade Range to limit the range of prices at which an order and/or quote will be allowed to execute. Upon posting of an order at the outer limit of the Acceptable Trade Range, either the current

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20 A Stock-Complex Strategy is the purchase or sale of a stated number of units of an underlying stock or a security convertible into the underlying stock ("convertible security") coupled with the purchase or sale of a Complex Options Strategy on the opposite side of the market representing either (A) the same number of units of the underlying stock or convertible security, or (B) the number of units of the underlying stock necessary to create a delta neutral position, but in no case in a ratio greater than eight-to-one (8.00), where the ratio represents the total number of units of the underlying stock or convertible security in the option legs to the total number of units of the underlying stock or convertible security in the stock leg. Only those Stock-Complex Strategies with no more than the applicable number of legs, as determined by the Exchange on a class-by-class basis, are eligible for processing. See Options 3, Section 14(a)(3).

21 A Complex Options Strategy is the simultaneous purchase and/or sale of two or more different options series in the same underlying security, for the same account, in a ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00) and for the purpose of executing a particular investment strategy. Only those Complex Options Strategies with no more than the applicable number of legs, as determined by the Exchange on a class-by-class basis, are eligible for processing. See Options 3, Section 14(a)(1).

Threshold Price of the order/quote or an updated NBB for buy orders/quotes or the NBO for sell orders/quotes (whichever is higher for a buy order/quote or lower for a sell order/quote) then becomes the reference price for calculating a new Acceptable Trade Range. If the order/quote remains unexecuted after the Posting Period, a new Acceptable Trade Range will be calculated and the order/quote will execute, route, or post up to the new Threshold Price. The Exchange proposes to amend the current rule text to state that a Member may request that their quotes/orders be returned if the quotes/orders would post at the outer limit of the Acceptable Trade Range, in which case, the quotes/orders will be returned. This functionality, which is not specified in the current rule, provides a Member with additional choices as to the price at which their order could execute. The Exchange proposes to reflect this existing functionality in Options 3, Section 15(a)(2)(A) to make clear that the choice exists to have an order returned. Today, Phlx also offers this functionality.[22]

Options 3, Section 22

The Exchange proposes to amend citations in Options 3, Section 22(c) to the Solicited Order Mechanism ("SOM") and the Facilitation Mechanism to cite to both the single-leg and Complex Order SOM and Facilitation Mechanism and correct an incorrect cite. The Exchange proposes to capitalize references to Reserve Order, which is a defined order type.

[22] See Phlx Options 3, Section 15(b)(1)(B).

Options 3, Section 23

The Exchange proposes to amend a technical error in Options 3, Section 23(b)(3), related to FIX Drop, to add a missing "has" to the sentence. This amendment is non-substantive.

Options 4A

The Exchange proposes to remove rule text related to the listing and trading of index options on the Nasdaq 100 Reduced Value Index ("NQX"). In 2018, ISE received approval to list and trade NQX.[23] Since that time, ISE has delisted options on NQX.[24] The Exchange does not have plans to re-list NQX in the foreseeable future. There is no open interest in NQX at this time. The Exchange proposes to delete all references to NQX to provide greater clarity to Members and the public regarding the Exchange's offerings.

Specifically, the Exchange proposes to delete references to NQX in Options 4A, Section 2, Definitions; Section 6, Position Limits for Broad-Based Index Options; and Section 12, Terms of Index Options Contracts. The Exchange also proposes to remove rule text related to NQX in Options 7, Section 3, Regular Order Fees and Rebates; Section 4, Complex Order Fees and Rebates; Section 5, Index Options Fees and Rebates; and Section 6, Other Options Fees and Rebates.

Options 5, Section 4

Today, Options 5, Section 4(a)(iii)(C) relates to the routing of SRCH Orders. Today, Options 5, Section 4(a)(iii)(C) states that a SRCH Order is routable at any time.

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23 See Securities Exchange Act Release No. 82911 (March 20, 2018), 83 FR 12966 (March 26, 2018) (SR-ISE-2017-106) (Approval Order).

24 See https://www.nasdaqtrader.com/MicroNews.aspx?id=OTA%202024-27.

A SRCH Order on the order book during an Opening Process (including a re-opening following a trading halt), whether it is received prior to an Opening Process or it is a Good-Till-Canceled or "GTC"[25] SRCH Order from a prior day, may be routed as part of an Opening Process. Orders initiate their own Route Timers and are routed in the order in which their Route Timers end. The Exchange proposes to add Good-Till-Date or "GTD"[26] SRCH Orders in addition to the GTC SRCH Orders so that Members are aware that a Time in Force ("TIF") of GTD, in addition to GTC, would be routable. The Exchange notes that these order types are both instructions to the Exchange that should be treated in a similar manner by the System with respect to order routing. Since an order with a TIF of GTD could have been received on a day prior to its routing, adding this rule text to the routing rule puts Members on notice that the order could route in order to avoid confusion. The routing rule should have included a GTD TIF in addition to the GTC TIF, which also may route. The current rule text inadvertently omitted GTD from the rule text. Today, GTD SRCH Orders may also be routed as part of an Opening Process.

Options 7, Section 7

The Exchange proposes to remove the language in Options 7, Section 7C, related to a technology migration, from its Rulebook as the Exchange's technology migration has

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25 An order to buy or sell entered with a TIF of "GTC" that remains in force until the order is filled, canceled or the option contract expires; provided, however, that GTC orders will be canceled in the event of a corporate action that results in an adjustment to the terms of an option contract. GTC orders may be entered through FIX or Precise. See Supplementary Material .02(b) to Options 3, Section 7.

26 An order to buy or sell entered with a TIF of "GTD," which, if not executed, will be cancelled at the sooner of the end of the expiration date assigned to the order, or the expiration of the series; provided, however, that GTD orders will be canceled in the event of a corporate action that results in an adjustment to the terms of an option contract. GTD orders may be entered through FIX or Precise. See Supplementary Material .02(c) to Options 3, Section 7.

occurred.[27] The rule text is no longer relevant. Today, Members are assessed the fees in Options 7, Section 7C for all ports to which they subscribe.

Implementation

The Exchange proposes to specify an implementation date, other than 30 days from the filing, for the proposed amendments to auction responses that amend the Facilitation Mechanism at Options 3, Section 11(b)(3), the Solicited Order Mechanism at Options 3, Section 11(d)(2), and the Price Improvement Mechanism ("PIM") in Options 3, Section 13(c)(2). The Exchange proposes to implement these changes on or before Q2 2026. Additionally, the Exchange proposes to amend the rule change related to the entry checks in Options 3, Section 13(b)(1) and (2) on or before the end of Q2 2026. The Exchange will specify the exact dates for each of the proposed changes in an Options Trader Alert at least 30 days prior to the operative date.

b. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[28] in general, and furthers the objectives of Section 6(b)(5) of the Act,[29] 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.

Options 3, Section 7

The Exchange's proposal to add an additional sentence to Options 3, Section 7(d) related to a Stop Order, as well as Options 3, Section 7(e) related to a Stop Limit Order,

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27 See Options Trader Alert #2024 – 41.

28 15 U.S.C. 78f(b).

29 15 U.S.C. 78f(b)(5).

is consistent with the Act because it would systemically prevent a Stop Order from being elected at the time of a late or out-of-sequence report or a trade that is outside the NBBO in the case of a complex order, rather than the execution price at the actual time of the execution. The Exchange believes that describing how the System operates in the case of a Stop Order or Stop Limit Order sets the expectation for Members thereby protecting investors and the public interest. Today, Phlx notes this behavior with respect to its Stop Order.[30]

Auction Responses

The Exchange's proposal to amend the Facilitation Mechanism at Options 3, Section 11(b)(3), the Solicited Order Mechanism at Options 3, Section 11(d)(2), and the PIM in Options 3, Section 13(c)(2) with respect to the handling of Response and Improvement Orders is consistent with the Act because the proposed rule change is intended to protect investors and the public interest. By way of example, during an auction, once an order or quote is received on the opposite side of the PIM, Facilitation, or Solicitation Agency Order which is marketable with the Agency Order, it changes the internal BBO and potentially the NBBO. If such initial order or quote does not comprise enough size to fully satisfy the PIM, Facilitation, or Solicitation Agency Order, since it has changed the internal BBO/NBBO, it now prevents Responses or Improvement Orders which improve the stop price of the auction from being entered at a price that is inferior to the initial order or quote, despite such initial order or quote's inability to satisfy the full volume of the Agency Order at an improved price. By utilizing the better of the internal BBO or the NBBO at the start of the relevant auction, the Exchange believes that better

30 See Phlx Options 3, Section 7(b)(4). Phlx Stop Orders include Stop limit orders.

priced responses would be permitted to trade with the order to be facilitated, Agency Order or Crossing Transaction. Today, those better priced responses would be rejected. This proposal would permit a response to these auctions to be entered at a price that is equal to or better than the better of the internal BBO or the NBBO on the same side of the market at the start of the auction and on the opposite side of the market at the time the Response is received, thereby preventing potential auction manipulation which can occur when an order/quote is entered at a price that improves the price of the order to be facilitated, Agency Order or Crossing Transaction. This amendment would allow other responses to that auction to be entered at a price that improves the price of the order to be facilitated, Agency Order or Crossing Transaction, but is inferior to such other quote/order responses which improved upon the internal BBO or NBBO. Utilizing the price of the market at the start of the auction, for the same side check, would prevent an order or quote from potentially manipulating the final auction price by changing the internal BBO/NBBO while not fully satisfying the Agency Order, thus preventing Responses or Improvement Orders from being entered at a price that improves the stop price of the auction, but remains inferior to the price of such initial order or quote. The entry checks differ for the same and opposite sides of the market because manipulation may not occur on the opposite side of the response because only interest on the same side of the response will be eligible to trade with the auctioned order. The proposed amendments would allow orders to be facilitated, Agency Orders or Crossing Transactions to potentially trade at improved prices.

Options 3, Section 11

The Exchange's proposed amendments to Options 3, Section 11, Auction Mechanisms, at paragraph (g), to correct a citation to Options 11, Section 13(e) and to remove a citation to Options 3, Section 13(e)(4)(vi), which does not exist in the rules as it was removed in a 2022 rule change[31] are non-substantive amendments. The Exchange's proposed amendment to correct a citation in Options 3, Section 11(e)(4)(D) to Options 3, Section 10 is also a non-substantive amendment.

Options 3, Section 13

Amending ISE's entry checks at Options 3, Section 13(b)(1) and (2) such that an Agency Order for a Priority Customer, in addition to being equal to or better than the NBBO, must be better than any Limit Order on the same side of the market as the Agency Order, and not a quote is consistent with the Act because this proposal will allow additional PIM Auctions to commence for Priority Customer Agency Orders since the entry check would not consider quotes. The Exchange will continue to consider all interest (quotes and orders) for Non-Priority Customers as is the case today. This change will not impact the handling of orders and quotes and their respective priority on the limit order book. This proposed change is being made for orders of Priority Customers that are less than 50 contracts and for orders that are more than 50 contracts. Priority Customers will continue to be guaranteed at least the NBBO when commencing PIM Orders and will continue to not trade-through the Exchange's order book. The Exchange believes that the proposal should continue to provide a Priority Customer Agency Order a meaningful

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31 See Securities Exchange Act Release No. 96518 (December 16, 2022), 87 FR 78740 (December 22, 2022) (SR-ISE-2022-28) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Certain ISE Complex Order Functionalities in Connection With a Technology Migration).

opportunity for price improvement, and thereby benefit investors and others in a manner that is consistent with the Act. The proposal is identical to PIXL entry checks at Phlx Options 3, Section 13(a)(1)(B) and (a)(2)(B).

The Exchange's proposal to amend Options 3, Section 13(c)(4) to add language regarding Improvement Orders in a PIM Auction is consistent with the Act. The proposal makes clear the current handling of Improvement Orders by not allowing Members to submit multiple Improvement Orders using the same badge/mnemonic and would also not aggregate all of those Improvement Orders at the same price. Further, additional Improvement Orders from the same badge/mnemonic for the same auction ID will automatically replace the previous Improvement Orders. This foregoing handling of Improvement Orders protects investors and the public interest.

Options 3, Section 14

The Exchange's proposal to define a Cancel-Replacement Complex Order within Options 3, Section 14(b)(20) is consistent with the Act because it provides Members the ability to cancel and replace a Complex Order in a single message as compared to entering two separate orders protects investors and the public interest as it allows Members to efficiently replace a prior Complex Order.

The proposed Cancel-Replacement Complex Order at Options 3, Section 14(b)(20) is identical to the rule text for a single-leg Cancel-Replacement Order at ISE Options 3, Section 7(f) except that: (1) Reserve Orders are not described, because there are no reserve complex orders; (2) single-leg risk protections do not apply to Complex Orders; and (3) protections for the legs of a Complex Order are described in Options 3, Section 7(f) which relates to the single-leg order book.[32] The Exchange is memorializing the manner in which a Cancel-Replacement Order is handled today by the System. The Exchange's proposal to amend certain rule citations in Options 3, Section 14, Complex Orders are non-substantive amendments.

Options 3, Section 15

The Exchange's proposal to amend Options 3, Section 15(a)(1)(A) is consistent with the Act and protects investors and the public interest because it makes clear to Members that a Stop Limit Order does not trigger OPP since OPP is a risk protection that activates when the limit price of an order is too far through the contra-side BBO. In this case, since Stop Limit Orders do not have a limit price until they are elected, OPP could not apply until the contingency is satisfied. The rule text makes clear to Members when OPP will apply when a Stop Limit Order is entered.

The Exchange's proposal to amend Options 3, Section 15(a)(1)(C) to align the rule text of ISE's Market Wide Risk Protection with the Market Wide Risk Protection in MRX Options 3, Section 15(a)(1)(C) to utilize the defined terms "Stock-Option Order,"[33]

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32 Today, the Exchange offers Members a single-leg Cancel-Replacement Order at Options 3, Section 7(f) and a Cancel-Replacement Complex Order that is currently not codified in the Rules.

33 A Stock-Option Strategy is the purchase or sale of a stated number of units of an underlying stock or a security convertible into the underlying stock ("convertible security") coupled with the purchase or sale of options contract(s) on the opposite side of the market representing either (A) the same number of units of the underlying stock or convertible security, or (B) the number of units of the underlying stock necessary to create a delta neutral position, but in no case in a ratio greater than eight-to-one (8.00), where the ratio represents the total number of units of the underlying stock or convertible security in the option leg to the total number of units of the underlying stock or convertible security in the stock leg. See Options 3, Section 14(a)(2).

"Stock-Complex Order"[34] and "Complex Option Order,"[35] protects investors and the public interest by clearly describing the operation of the Market Wide Risk Protection. Today, the Market Wide Risk Protection counting programs maintain separate counts over rolling time period for the total number of orders entered in the regular order book, complex order book with only options legs, and the complex order book with both stock and options legs. Additionally, the risk protection counts the total number of contracts traded in regular orders and Complex Orders with only options legs.[36] The Market Wide Risk Protection will continue to reduce risk associated with system errors or market events that may cause Members to send a large number of orders, or receive multiple, automatic executions, before they can adjust their exposure in the market. QCC Orders, Complex Qualified QCC Orders, QCC with Stock Orders, and Complex QCC with Stock Orders are considered, where applicable, in Options 3, Section 15(a)(1)(C)(1), (2), (4) and (5). Members will continue to be provided with the flexibility needed to appropriately tailor the Market Wide Risk Protection to their respective risk management

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34 A Stock-Complex Strategy is the purchase or sale of a stated number of units of an underlying stock or a security convertible into the underlying stock ("convertible security") coupled with the purchase or sale of a Complex Options Strategy on the opposite side of the market representing either (A) the same number of units of the underlying stock or convertible security, or (B) the number of units of the underlying stock necessary to create a delta neutral position, but in no case in a ratio greater than eight-to-one (8.00), where the ratio represents the total number of units of the underlying stock or convertible security in the option legs to the total number of units of the underlying stock or convertible security in the stock leg. Only those Stock-Complex Strategies with no more than the applicable number of legs, as determined by the Exchange on a class-by-class basis, are eligible for processing. See Options 3, Section 14(a)(3).

35 A Complex Options Strategy is the simultaneous purchase and/or sale of two or more different options series in the same underlying security, for the same account, in a ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00) and for the purpose of executing a particular investment strategy. Only those Complex Options Strategies with no more than the applicable number of legs, as determined by the Exchange on a class-by-class basis, are eligible for processing. See Options 3, Section 14(a)(1).

36 The Member's allowable order rate for the Order Entry Rate Protection is comprised of the parameters defined in (1) to (3), while the allowable contract execution rate for the Order Execution Rate Protection is comprised of the parameters defined in (4) and (5).

needs. MRX-2023-10 noted that ISE would amend its rules to align its rule text to MRX, which reflects identical functionality. The Exchange's proposal to amend Options 3, Section 15(a)(1)(C)(iii) to correct a citation to a subparagraph from "(b)(1)(D)" to "(ii)" is non-substantive.

The Exchange's proposal to amend Options 3, Section 15(a)(2)(A), Acceptable Trade Range, to provide that a Member may request that their quotes/orders be returned if the quotes/orders would post at the outer limit of the Acceptable Trade Range, in which case, the quotes/orders will be returned is consistent with the Act. This functionality, which is not specified in the current rule, provides a Member with additional choices as to the price at which their order/quote could execute. The Exchange proposes to reflect this existing functionality in Options 3, Section 15(a)(2)(A) to make clear that the choice exists to have an order/quote returned. Today, Phlx offers this functionality.[37]

Options 3, Section 22

The Exchange's proposal to amend citations in Options 3, Section 22(c) to the SOM and the Facilitation Mechanism to cite to both the single-leg and Complex Order SOM and Facilitation Mechanism and correct an incorrect cite are non-substantive amendments. The Exchange's proposal to capitalize references to Reserve Order, which is a defined order type, is a non-substantive amendment.

Options 3, Section 23

The Exchange's proposal to amend a technical error in Options 3, Section 23(b)(3), related to FIX Drop, to add a missing "has" to the sentence is non-substantive.

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[37] See Phlx Options 3, Section 15(b)(1)(B).

Options 4A, Section 2

The Exchange's proposal to remove rule text related to the listing and trading of index options on NQX is consistent with the Act as the Exchange has delisted NQX, there is no open interest in this product, and the Exchange does not have plans to re-list NQX in the foreseeable future. The Exchange proposes to delete all references to NQX to provide greater clarity to Members and the public regarding the Exchange's offerings. Specifically, the Exchange proposes to delete references to NQX in Options 4A, Section 2, Definitions; Section 6, Position Limits for Broad-Based Index Options; and Section 12, Terms of Index Options Contracts. The Exchange also proposes to remove rule text related to NQX in Options 7, Section 3, Regular Order Fees and Rebates; Section 4, Complex Order Fees and Rebates; Section 5, Index Options Fees and Rebates; and Section 6, Other Options Fees and Rebates.

Options 5, Section 4

Amending Options 5, Section 4(a)(iii)(C), related to a SRCH Order, to make clear that a Good-Till-Date or "GTD" SRCH Order may be routed as part of an Opening Process is consistent with the Act and protects investors and the public interest by allowing an order type with this TIF to route to an away market(s) at the NBBO in order for the order to be executed. Since an order with a TIF of GTD could have been received on a day prior to its routing, adding this rule text to the routing rule puts Members on notice that the order could route in order to avoid confusion. Options 5, Section 4(a)(iii)(C) should have included a GTD TIF in addition to the Good-Till-Canceled or "GTC" TIF, which also may route. The current rule text inadvertently omitted GTD from the rule text.

Options 7, Section 7

The Exchange's proposal to remove the language in Options 7, Section 7C, related to a technology migration, from its Rulebook is consistent with the Act as the Exchange's technology migration has occurred. The rule text is no longer relevant. Today, Members are assessed the fees in Options 7, Section 7C for all ports to which they subscribe.

4. 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.

Options 3, Section 7

The Exchange's proposal to add an additional sentence to Options 3, Section 7(d) related to a Stop Order as well as Options 3, Section 7(e) related to Stop Limit Order does not impose an undue burden on intra-market competition because, today, no Member's Stop Order or Stop Limit Order would be elected by a trade that is reported late or out-of-sequence or by a Complex Order trading with another Complex Order.

The Exchange's proposal to add an additional sentence to Options 3, Section 7(d) related to a Stop Order does not impose an undue burden on inter-market competition because today Phlx notes this behavior with respect to its Stop Order or Stop Limit Order.[38]

[38] See Phlx Options 3, Section 7(b)(4) which applies to Stop Orders and Stop limit orders.

Auction Responses

The Exchange's proposal to amend the Facilitation Mechanism at Options 3, Section 11(b)(3), the Solicited Order Mechanism at Options 3, Section 11(d)(2), and the PIM in Options 3, Section 13(c)(2) with respect to the handling of Response and Improvement Orders does not impose an undue burden on intra-market competition as this amendment will be applied uniformly to all orders entered into the Facilitation Mechanism, the Solicited Order Mechanism or a PIM.

The Exchange's proposal to amend the Facilitation Mechanism at Options 3, Section 11(b)(3), the Solicited Order Mechanism at Options 3, Section 11(d)(2), and the PIM in Options 3, Section 13(c)(2) with respect to the handling of Response and Improvement Orders does not impose an undue burden on inter-market competition because other options exchanges may adopt a similar rule.

Options 3, Section 11

The Exchange's proposed amendments to Options 3, Section 11, Auction Mechanisms, at paragraph (g), to correct a citation to Options 11, Section 13(e) and to remove a citation to Options 3, Section 13(e)(4)(vi), which does not exist in the rules as it was removed in a 2022 rule change[39] are non-substantive amendments. The Exchange's proposed amendment to correct a citation in Options 3, Section 11(e)(4)(D) to Options 3, Section 10 is also a non-substantive amendment.

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39 See Securities Exchange Act Release No. 96518 (December 16, 2022), 87 FR 78740 (December 22, 2022) (SR-ISE-2022-28) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Certain ISE Complex Order Functionalities in Connection With a Technology Migration).

Options 3, Section 13

The Exchange's proposal to amend ISE's entry checks at Options 3, Section 13(b)(1) and (2) such that an Agency Order for a Priority Customer, in addition to being equal to or better than the NBBO, must be better than any Limit Order on the same side of the market as the Agency Order, and not a quote does not impose an undue burden on intra-market competition because the entry check would apply uniformly to all Priority Customer PIM Agency Orders.

The Exchange's proposal to amend ISE's entry checks at Options 3, Section 13(b)(1) and (2) such that an Agency Order for a Priority Customer, in addition to being equal to or better than the NBBO, must be better than any Limit Order on the same side of the market as the Agency Order, and not a quote does not impose an undue burden on inter-market competition because other options exchanges could adopt a similar entry check. Today, Phlx Options 3, Section 13(a)(1)(B) and (a)(2)(B) have identical entry checks.

The Exchange's proposal to amend Options 3, Section 13(c)(4) to add language regarding Improvement Orders in a PIM Auction does not impose an undue burden on intra-market competition because the Exchange would handle all Improvement Orders in a PIM Auction in a uniform manner.

The Exchange's proposal to amend Options 3, Section 13(c)(4) to add language regarding Improvement Orders in a PIM Auction does not impose an undue burden on inter-market competition because other options exchanges may adopt a similar rule.

Options 3, Section 14

The Exchange's proposal to define a Cancel-Replacement Order within Options

3, Section 14(b)(20) does not impose an undue burden on inter-market competition because, today, ISE permits Members to cancel and replace a Complex Order within a single message allows for more efficiency for Members submitting such orders. Also, today, ISE permits single-leg order and complex order cancel-replacements.[40]

The Exchange's proposal to define a Cancel-Replacement Order within Options 3, Section 14(b)(20) does not impose an undue burden on intra-market competition because other Exchanges permit similar order types such as Phlx Options 3, Section 14(b)(v).

The Exchange's proposal to amend certain rule citations in Options 3, Section 14, Complex Orders are non-substantive amendments.

Options 3, Section 15

The Exchange's proposal to amend Options 3, Section 15(a)(1)(A) to note that the OPP does not apply to Stop Limit Orders until elected does not impose an undue burden on intra-market competition because OPP will uniformly not apply to any Stop Limit Order on the Exchange upon receipt. Once a Stop Limit Order is elected, the Exchange would check such Stop Limit Orders against the OPP bounds.

The Exchange's proposal to amend Options 3, Section 15(a)(1)(A) to note that the OPP does not apply to Stop Limit Orders until elected does not impose an undue burden on inter-market competition because Phlx has a similar rule.[41]

The Exchange's proposal to amend Options 3, Section 15(a)(1)(C) to align the rule text of ISE's Market Wide Risk Protection with the Market Wide Risk Protection in

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40 See ISE Options 3, Section 7(f).

41 See Phlx Options 3, Section 7(b)(4).

MRX Options 3, Section 15(a)(1)(C) does not impose an undue burden on intra-market competition because this risk protection will apply uniformly to all Members.

The Exchange's proposal to amend Options 3, Section 15(a)(1)(C) to align the rule text of ISE's Market Wide Risk Protection with the Market Wide Risk Protection in MRX Options 3, Section 15(a)(1)(C) does not impose an undue burden on inter-market competition because MRX has identical rule text at Options 3, Section 15(a)(1)(C).

The Exchange's proposal to amend Options 3, Section 15(a)(2)(A), Acceptable Trade Range, does not impose an undue burden on intra-market competition because this rule text will apply uniformly to all Members.

The Exchange's proposal to amend Options 3, Section 15(a)(2)(A), Acceptable Trade Range, does not impose an undue burden on inter-market competition because BX has this functionality.[42]

Options 3, Section 23

The Exchange's proposal to amend a technical error in Options 3, Section 23(b)(3), related to FIX Drop, to add a missing "has" to the sentence is non-substantive.

Options 4A, Section 2

The Exchange's proposal to remove rule text related to the listing and trading of index options on NQX does not impose an undue burden on intra-market competition as no Member will be able to transact in NQX.

The Exchange's proposal to remove rule text related to the listing and trading of index options on NQX does not impose an undue burden on inter-market competition as other exchanges may innovate and propose similar products.

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42 See BX Options 3, Section 15(b)(1)(A).

Options 5, Section 4

The Exchange's proposal to amend Options 5, Section 4(a)(iii)(C), related to a SRCH Order, does not impose an undue burden on intra-market competition as all Member GTD Orders will be treated in a uniform manner with respect to routing and GTD and GTC Orders, which both include instructions to the Exchange for expiration, would both be treated in a similar manner by the System with respect to order routing.

The Exchange's proposal to amend Options 5, Section 4(a)(iii)(C), related to a SRCH Order, does not impose an undue burden on inter-market competition as other exchanges can elect to route GTD Orders.

Options 7, Section 7

The Exchange's proposal to remove the language in Options 7, Section 7C, related to a technology migration, from its Rulebook does not impose an undue burden on intra-market competition as the rule text will not be applied to any Member.

The Exchange's proposal to remove the language related to a technology migration from its Rulebook does not impose an undue burden on inter-market competition as the rule text is no longer relevant and was only subject to a technology migration.

5. 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.

6. Extension of Time Period for Commission Action

The Exchange does not consent to an extension of the time period for Commission action.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii)[43] of the Act and Rule 19b-4(f)(6) thereunder[44] in that it effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

The proposal does not significantly affect the protection of investors or the public interest. The Exchange's proposal to add an additional sentence to Options 3, Section 7(d) related to a Stop Order and Options 3, Section 7(e) related to a Stop Limit Order does not significantly affect the protection of investors or the public interest because it would systemically prevent a Stop Order from being elected at the time of a late or out-of-sequence report or a trade that is outside the NBBO in the case of a complex order, rather than the execution price at the actual time of the execution. The rule text provides Members with notice that the System will not elect a Stop Order or Stop Limit Order with a trade that is reported late or out-of-sequence or by a Complex Order trading with another Complex Order. Today, Phlx notes this behavior with respect to its Stop Order.[45] Amending the Facilitation Mechanism at Options 3, Section 11(b)(3), the Solicited Order Mechanism at Options 3, Section 11(d)(2), and the PIM in Options 3, Section 13(c)(2)

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[43] 15 U.S.C. 78s(b)(3)(A)(iii).

[44] 17 CFR 240.19b-4(f)(6).

[45] See Phlx Options 3, Section 7(b)(4). Phlx's Stop Order includes a Stop limit order.

with respect to the handling of Response and Improvement Orders does not significantly affect the protection of investors or the public interest because the proposal would permit a response to these auctions to be entered at a price that is equal to or better than the better of the internal BBO or the NBBO on the same side of the market at the start of the auction, thereby preventing potential auction manipulation which can occur when an order/quote is entered at a price that improves the price of the order to be facilitated, Agency Order or Crossing Transaction. Further, this amendment would allow other responses to that auction to be entered at a price that improves the price of the order to be facilitated, Agency Order or Crossing Transaction, but is inferior to such other quote/order responses which improved upon the internal BBO or NBBO. The proposed amendments would allow order to be facilitated, Agency Order or Crossing Transaction to potentially trade at improved prices. Amending ISE's entry checks at Options 3, Section 13(b)(1) and (2) such that an Agency Order for a Priority Customer, in addition to being equal to or better than the NBBO, must be better than any Limit Order on the same side of the market as the Agency Order, and not a quote does not significantly affect the protection of investors or the public interest because this proposal will allow additional PIM Auctions to commence for Priority Customer Agency Orders since the entry check would not consider quotes but will continue to not trade-through the Exchange's order book. The Exchange will continue to consider all interest (quotes and orders) for Non-Priority Customers as is the case today. The proposal is identical to PIXL entry checks at Phlx Options 3, Section 13(a)(1)(B) and (a)(2)(B). The Exchange's proposal to amend Options 3, Section 13 to add language regarding Improvement Orders in a PIM Auction does not significantly affect the protection of investors or the public interest because the Exchange would not allow Members to submit multiple Improvement Orders using the same badge/mnemonic and would also not aggregate all of those Improvement Orders at the same price. Further, additional Improvement Orders from the same badge/mnemonic for the same auction ID will automatically replace the previous Improvement Orders. The Exchange's proposal to define a Cancel-Replacement Complex Order within Options 3, Section 14(b)(20) does not significantly affect the protection of investors or the public interest because this order type will permit a Member to cancel and replace a Complex Order in a single message as compared to entering two separate orders, which some Members may find more efficient. The proposed order type specifies, similar to single-leg orders at ISE Options 3, Section 7(d)(v) that a replacement Complex Order will retain the priority of the cancelled Complex Order provided the price is not amended or size is not increased. If the price is amended, or the size is increased, the replacement Complex Order will result in a loss in priority. The Exchange's proposal to amend Options 3, Section 15(a)(1)(A) to note that OPP does not apply to Stop Limit Orders until elected does not significantly affect the protection of investors or the public interest because Stop Limit Orders do not have a limit price until they are elected; OPP could not apply until the contingency is satisfied. Amending Options 3, Section 15(a)(1)(C) to align the rule text of ISE's Market Wide Risk Protection with the Market Wide Risk Protection in MRX Options 3, Section 15(a)(1)(C) does not significantly affect the protection of investors or the public interest because QCC Orders, Complex Qualified QCC Orders, QCC with Stock Orders, and Complex QCC with Stock Orders are considered, where applicable, in Options 3, Section 15(a)(1)(C)(1), (2), (4) and (5). MRX-2023-10 noted that ISE would align its rule text.

Amending Options 3, Section 15(a)(2)(A), Acceptable Trade Range, to provide that a Member may request that their quotes/orders be returned if the quotes/orders would post at the outer limit of the Acceptable Trade Range, in which case, the quotes/orders will be returned does not significantly affect the protection of investors or the public interest, rather it offers a Member with additional choices as to the price at which their order/quote could execute. Today, Phlx also offers this functionality.[46] Removing rule text related to the listing and trading of index options on NQX does not significantly affect the protection of investors or the public interest as the Exchange has delisted NQX, there is no open interest in this product and the Exchange does not have plans to re-list NQX in the foreseeable future. Amending Options 5, Section 4(a)(iii)(C), related to a SRCH Order, to make clear that a GTD SRCH Order may be routed as part of an Opening Process, does not significantly affect the protection of investors or the public interest because it provides notice to Members that a TIF of GTD, in addition to GTC, would be routable as an order with a TIF of GTD could have been received on a day prior to its routing. The current rule text was inadvertently omitted GTD from the rule text. The Exchange's proposal to remove the language in Options 7, Section 7C related to a technology migration from its Rulebook is consistent with the Act as the Exchange's technology migration has occurred. The rule text is no longer relevant. Today, Members are assessed the fees in Options 7, Section 7C for all ports to which they subscribe. The remainder of the changes are non-substantive.

The Exchange's proposal to add an additional sentence to Options 3, Section 7(d) related to a Stop Order as well as Options 3, Section 7(e) related to Stop Limit Order does

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[46] See Phlx Options 3, Section 15(b)(1)(B).

not impose any significant burden on competition because, today, no Member's Stop Order or Stop Limit Order would be elected by a trade that is reported late or out-of-sequence or by a Complex Order trading with another Complex Order. The Exchange's proposal to amend the Facilitation Mechanism at Options 3, Section 11(b)(3), the Solicited Order Mechanism at Options 3, Section 11(d)(2), and the PIM in Options 3, Section 13(c)(2) with respect to the handling of Response and Improvement Orders does not impose any significant burden on competition as this amendment will be applied uniformly to all orders entered into the Facilitation Mechanism, the Solicited Order Mechanism or a PIM. The Exchange's proposed amendment to Options 3, Section 11, Auction Mechanisms, at paragraph (g), to remove a citation to Options 3, Section 13(e)(4)(vi), which does not exist in the rules as it was removed in a 2022 rule change[47] is a non-substantive amendment. The Exchange's proposal to amend ISE's entry checks at Options 3, Section 13(b)(1) and (2) such that an Agency Order for a Priority Customer, in addition to being equal to or better than the NBBO, must be better than any Limit Order on the same side of the market as the Agency Order, and not a quote does a significant burden on competition because the entry check would apply uniformly to all Priority Customer PIM Agency Orders. The Exchange's proposal to amend Options 3, Section 13(c)(4) to add language regarding Improvement Orders in a PIM Auction does not impose a significant burden on competition because the Exchange would handle all Improvement Orders in a PIM Auction in a uniform manner. The Exchange's proposal to define a Cancel-Replacement Order within Options 3, Section 14(b)(20) does not impose

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[47] See Securities Exchange Act Release No. 96518 (December 16, 2022), 87 FR 78740 (December 22, 2022) (SR-ISE-2022-28) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Certain ISE Complex Order Functionalities in Connection With a Technology Migration).

a significant burden on competition because, today, ISE permits Members to cancel and replace a Complex Order within a single message allows for more efficiency for Member submitting such orders. Also, today, ISE permits single-leg order and complex order cancel-replacements.[48] The Exchange's proposal to amend Options 3, Section 15(a)(1)(A) to note that the OPP does not apply to Stop Limit Orders until elected does not impose any significant burden on competition because OPP will uniformly not apply to any Stop Limit Order until elected on the Exchange. Once a Stop Limit Order is elected, the Exchange would check all Stop Limit Orders against the OPP bounds. The Exchange's proposal to amend Options 3, Section 15(a)(1)(C) to align the rule text of ISE's Market Wide Risk Protection with the Market Wide Risk Protection in MRX Options 3, Section 15(a)(1)(C) does not impose a significant burden on competition because this risk protection will apply uniformly to all Members. The Exchange's proposal to amend Options 3, Section 15(a)(2)(A), Acceptable Trade Range, does not impose any significant burden on competition because this rule text will apply uniformly to all Members. The Exchange's proposal to remove rule text related to the listing and trading of index options on NQX does not impose a significant burden on competition as no Member will be able to transact in NQX. The Exchange's proposal to amend Options 5, Section 4(a)(iii)(C), related to a SRCH Order, does not impose a significant burden on competition as all Member GTD Orders will be treated in a uniform manner with respect to routing and GTD and GTC Orders, which both include instructions to the Exchange for expiration, would both be treated in a similar manner by the System with respect to order routing. The Exchange's proposal to remove the language related to a technology

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48 See ISE Options 3, Section 7(f).

migration from its Rulebook does not impose a significant burden on competition as the rule text will not be applied to any Member. The remainder of the changes are non-substantive.

Furthermore, Rule 19b-4(f)(6)(iii)[49] requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change under that subsection at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The Exchange has provided such notice.

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.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

The Exchange proposal to amend Options 3, Section 7(d), related to Stop Orders and Stop Limit Orders at Options 3, Section 7(d) are substantially similar to Phlx Options 3, Section 7(b)(4).

The Exchange proposal to amend Legging Orders at Options 3, Section 7(k)(4) is identical to rule text in MRX Options 3, Section 7(k)(4).

The Exchange proposal to amend the ISE PIM entry checks in Options 3, Section 13(b)(1) and (2) is identical to Phlx Options 3, Section 13(a)(1)(B) and (a)(2)(B).

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[49] 17 CFR 240.19b-4(f)(6)(iii).

The Exchange proposal to amend language in ISE Options 3, Section 15(a)(1)(C), related to the Market Wide Risk Protection, is identical to MRX Options 3, Section 15(a)(1)(C).

The Exchange proposal to amend Options 3, Section 15(a)(2)(A), related to the Acceptable Trade Range, is identical to behavior at Phlx Options 3, Section 15(b)(1)(B).

The Exchange proposal to amend Options 3, Section 14(b)(20) to add a Cancel-Replacement Complex Order is identical to the rule text for a single-leg Cancel-Replacement Order in ISE Options 3, Section 7(f) for all applicable rule text. The excluded rule text is irrelevant because: (1) there are no reserve complex orders; (2) single-leg risk protections do not apply to Complex Orders; and (3) protections for the legs from a Complex Orders are described in Options 3, Section 7(f) as they relate to the single-leg book.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

1. Notice of Proposed Rule Change for publication in the Federal Register.

5. Text of the proposed rule change.