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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-80525; File No. SR-ISE-2017-33]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Delay the Implementation of Simultaneous Complex Order Auctions

April 25, 2017

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 17, 2017, Nasdaq ISE, LLC (“ISE” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to delay implementation of simultaneous complex order auctions in the same complex strategy in connection with a system migration to Nasdaq INET technology.

The text of the proposed rule change is available on the Exchange’s website at www.ise.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

ISE offers various complex order auctions that are designed to provide members an opportunity to trade and to potentially receive price improvement for complex orders that are entered on the Exchange, including an "Exposure" auction pursuant to Rule 722(b)(3)(iii), a Complex Price Improvement Mechanism ("PIM") pursuant to Supplementary Material .09 to Rule 723, a Complex Facilitation Mechanism pursuant to Supplementary Material .08 to Rule 716, and Complex Solicited Order Mechanism also pursuant to Supplementary Material .08 to Rule 716.

The purpose of the proposed rule change is to delay implementation of simultaneous complex order auctions in the same complex strategy in connection with a system migration to Nasdaq INET technology.³ No other changes to the complex order auction mechanisms are being proposed, and these auctions will continue to function as they do today, with the exception

³ See Securities Exchange Act Release No. 80432 (April 11, 2017 (SR-ISE-2017-03) (Order Approving Proposed Rule Change, as Modified by Amendment No. 1, to Amend Various Rules in Connection with a System Migration to Nasdaq INET Technology). INET is the proprietary core technology utilized across Nasdaq's global markets and utilized on The NASDAQ Options Market LLC ("NOM"), NASDAQ PHLX LLC ("Phlx"), NASDAQ BX, Inc. ("BX"), and introduced recently on Nasdaq GEMX, LLC ("GEMX"). The migration of ISE to the INET architecture would result in higher performance, scalability, and more robust architecture.

that after the migration to the INET platform a member will not be permitted to initiate a complex order auction in a particular complex strategy if another complex order auction is already ongoing in that complex strategy. With this proposed change, the Exchange will handle multiple complex order auctions in the same complex strategy in a manner that is consistent with implementation on other options exchanges,⁴ and will reintroduce simultaneous complex order auctions in the same complex strategy at a later date within one year of this filing.

Today, only one PIM may be ongoing at any given time in a series or complex strategy, and PIMs are not permitted to queue or overlap in any manner;⁵ however, there are no similar restrictions for non-PIM auctions, and any such auctions may be processed concurrently, including in parallel with a PIM auction. For example, while the trading system would prohibit a member from entering a PIM auction when another PIM auction is already ongoing in a complex strategy, if there was an Exposure auction already running a member would be able to start a PIM, Facilitation, Solicitation, or even another Exposure auction in that strategy. This allows maximum ability of members to express their trading intent on the Exchange by permitting multiple complex order auctions in the same complex strategy to be ongoing at any particular time.

Nevertheless, other options exchanges do not offer the same functionality for simultaneous complex order auctions in a complex strategy provided by the Exchange. The Exchange's affiliate, Nasdaq Phlx, LLC ("Phlx"), for example, does not allow the initiation of a Complex Order Live Auction ("COLA") when there is already a Price Improvement XL

⁴ See infra notes 6-8 and accompanying text.

⁵ See Supplementary Material .04 to Rule 723.

(“PIXL”) auction already ongoing in the strategy.⁶ Similarly, MIAX can limit the frequency of Complex Auctions by establishing a minimum time period between such auctions,⁷ and permits only one Complex Auction per strategy to be in progress at any particular time.⁸

In order to give the Exchange additional time to develop and test this functionality, the Exchange proposes to delay the implementation of simultaneous complex order auctions in the same complex strategy in connection with the migration of the trading system to the INET platform. With the proposed change, only one complex order auction may be ongoing at any given time in a complex strategy, and such auctions will not queue or overlap in any manner. For PIM, Facilitation, or Solicitation auctions, the Exchange will reject a complex order auction of the same or different auction type in a complex strategy that is initiated while another complex order auction is ongoing in that complex strategy.⁹ In the case where a complex order auction has already been initiated in a complex strategy, an Exposure auction for an order for that strategy will not be initiated and the order will be processed as a complex order that is not marked for price improvement,¹⁰ instead of rejecting the complex order. If the member

⁶ See Phlx Rule 1098(e)(2). Phlx would also similarly not allow a PIXL auction to be initiated if there is a COLA already ongoing in the complex strategy.

⁷ See MIAX Rule 518(d)(2).

⁸ See Securities Exchange Act Release Nos. 78620 (August 18, 2016), 81 FR 58769, 58799 (August 25, 2016) (Notice); 79072 (October 7, 2016), 81 FR 71131 (October 14, 2016)) (Approval) (SR-MIAX-2016-26).

⁹ The rejection message sent to the member will contain an appropriate reason code indicating that the auction was rejected due to another ongoing complex order auction in the same complex strategy.

¹⁰ Currently, an Exposure order auction is automatically initiated when a member submits an eligible complex order that is marked for price improvement. See Rule 722(b)(3)(iii). Pursuant to Rule 722(b)(3)(iii), complex orders may be marked for price improvement, and if so marked, the complex order may be exposed on the complex order book for a period of up to one-second before being automatically executed. Members can also request that their complex orders be cancelled after the exposure period.

requested the order to be cancelled after the exposure period, then the complex order will be cancelled back to the member. Simultaneous complex order auctions in the same complex strategy will be subsequently rolled out on the INET trading system within one year of the date of filing of this proposed rule change. The Exchange is staging the re-platform of its trading system to provide maximum benefit to its members while also ensuring a successful rollout. This delay in implementing simultaneous complex order auctions in the same complex strategy will provide the Exchange additional time to test and implement this functionality on the INET platform.

The Exchange believes that implementing simultaneous complex order auctions in the same complex strategy at a later date will not have a significant impact on members as it is rare for multiple complex order auctions in a complex strategy to be ongoing at a particular time. This is particularly the case today due to the recent decrease in the Exchange's auction timers to 100 milliseconds.¹¹ The Exchange notes that simultaneous complex order auctions in a strategy only occur approximately 0.5% of the time that an auction runs on the Exchange. The Exchange therefore believes that the impact on members will be insignificant, and if a member does have auction eligible interest to execute when another complex order auction is ongoing, the member can either re-submit that order to the Exchange, after the auction has concluded, or submit it to another options market that provides similar auction functionality. In this regard, the Exchange notes that its market data feeds provide information to members about when a complex order

¹¹ See Securities Exchange Act Release No. 79733 (January 4, 2017), 82 FR 3055 (January 10, 2017) (SR-ISE-2016-26) (permitting the Exchange to determine auction timers for PIM, Facilitation, and Solicitation within a range of 100 milliseconds and one second). Each of these auction timers are currently set to 100 milliseconds – i.e., the bottom of the range approved in the filing. Exposure auctions can be any duration up to one second (See Rule 722(b)(3)), and are also currently set to 100 milliseconds.

auction is ongoing, and members can therefore use this information to make appropriate routing decisions based on applicable market conditions.

Implementation

The proposed rule change will be implemented on the Exchange's new INET trading system, which is scheduled to launch in Q2 2017.¹² The INET migration will take place on a symbol by symbol basis¹³ as specified by the Exchange in a notice to be provided to Members.¹⁴ The Exchange is proposing to implement this rule change on the INET platform as the symbols migrate to that platform. As such, the proposed change will be rolled out in symbols as they migrate to the INET platform, at which point only one complex order auction will be permitted to be ongoing in a complex strategy. Members will still be able to use all of the Exchange's complex order auctions, provided that there is not another auction already ongoing in the complex strategy. The Exchange will issue an Options Trader Alert to all members notifying them that simultaneous complex order auctions will no longer be available with the symbol migration to INET. The Exchange proposes to launch the simultaneous complex order auction functionality on the INET platform within one year from the date of filing of this rule change to be announced in an Options Trader Alert.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities

¹² See supra note 3.

¹³ When a symbol is migrated to INET, all strikes and strategies will migrate with that symbol.

¹⁴ The Exchange will issue an Options Trader Alert prior to the migration and will specify the dates that symbols will migrate to the INET platform.

exchange, and, in particular, with the requirements of Section 6(b) of the Act.¹⁵ In particular, the proposal is consistent with Section 6(b)(5) of the Act,¹⁶ because it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is consistent with the Act as it will provide additional time for the Exchange to rebuild this technology on the INET platform. By delaying the implementation of simultaneous complex order auctions in a complex strategy, the Exchange will have additional time to test and implement this functionality. The Exchange will provide members with ample notice of the delayed implementation of this functionality in an Options Trader Alert, and will continue to provide notifications to members to ensure clarity about the availability of this functionality with the symbol migration. The Exchange will also issue an Options Trader Alert indicating when simultaneous complex order auctions in a complex strategy will become available on the INET platform.

The Exchange does not anticipate that the proposed rule change will have any meaningful impact with respect to members' ability to execute complex order auctions as similar restrictions are already in place on other options exchanges.¹⁷ Simultaneous complex order auctions in a complex strategy are rare, and therefore the vast majority of the time members will be able to enter a complex order auction notwithstanding the temporary delay of the implementation of concurrent auctions. With respect to Exposure auctions, in the case where another complex order auction in the same strategy has already been initiated, the Exchange proposes to allow the

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(5).

¹⁷ See supra notes 6-8 and accompanying text.

complex order to continue to be processed without an auction in the same manner as complex orders that are not marked for price improvement. If the member has marked the complex order to be cancelled after the exposure period, however, the Exchange will cancel the order back to the member consistent with that instruction. If the member is not able to initiate a complex order auction because another complex order auction in the same strategy has been initiated, the member may either re-initiate the auction after the auction concludes or submit the order to another options market that offers similar functionality. Thus, members will be able to continue to express their trading intent regardless of the proposed delay in concurrent auction functionality. When the simultaneous complex order auction functionality is rebuilt and appropriately tested, the Exchange will then reintroduce this functionality.

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

In accordance with Section 6(b)(8) of the Act,¹⁸ the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is designed to prevent simultaneous complex order auctions in a complex strategy in connection with the migration of the trading system to INET technology, and is not designed to have any significant competitive impact. Similar restrictions are already in place on other options exchanges.¹⁹ The Exchange does not believe that the proposed rule change will impose any burden on intra-market competition because all Members uniformly will not be able to initiate simultaneous auctions in the same complex order strategy.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

¹⁸ 15 U.S.C. 78f(b)(8).

¹⁹ See supra notes 6-8 and accompanying text.

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act²⁰ and subparagraph (f)(6) of Rule 19b-4 thereunder.²¹

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

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

²⁰ 15 U.S.C. 78s(b)(3)(A)(iii).

²¹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-ISE-2017-33 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-2017-33. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should

submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ISE-2017-33 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.²²

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Assistant Secretary.

²² 17 CFR 200.30-3(a)(12).

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