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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-88434; File No. SR-ISE-2020-10]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Complex Orders

March 20, 2020.

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 March 9, 2020, Nasdaq ISE, LLC (“ISE” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend Options 3, Section 7, “Types of Orders,” and Options 3, Section 14, “Complex Orders” to permit the Exchange to determine the availability of order types and time-in-force provisions and to add other existing order types to the list of single-leg and Complex Order types.

The text of the proposed rule change is available on the Exchange’s Website at <http://ise.cchwallstreet.com/>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

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

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

1. Purpose

The Exchange proposes to amend Options 3, Section 7, "Types of Orders," and Options 3, Section 14, "Complex Orders" to: (1) provide that the Exchange may determine which order types and times-in-force provisions are available on a class or system basis; and (2) to add other existing order types to the list of single-leg and Complex Order types.

The Exchange proposes to add a sentence to Options 3, Section 14, Complex Orders, which states, "The Exchange may determine to make certain order types and/or times-in-force available on a class or System basis." This sentence exists today within Nasdaq ISE, LLC ("ISE") Options 3, Section 7, "Types of Orders."³ This proposed change is based on the rules of ISE Options 3, Section 7 and the rules of Cboe BZX Exchange, Inc. ("BZX Options"),⁴ Rule

³ See Securities Exchange Act Release No. 88294 (February 26, 2020), 85 FR 12629 (March 3, 2020) (SR-ISE-2020-07).

⁴ BZX Options Rule 21.1(d), Definitions, provides "The term 'Order Type' shall mean the unique processing prescribed for designated orders, subject to the restrictions set forth in paragraph (l) below with respect to orders and bulk messages submitted through bulk ports, that are eligible for entry into the System. Unless otherwise specified in the Rules or the context indicates otherwise, the Exchange determines which of the following Order Types are available on a class or system basis." BZX Options Rule 21.1(f), Definitions, provides "The term 'Time in Force' shall mean the period of time that the System will

21.1, Cboe EDGX Exchange, Inc. (“EDGX Options”) Rule 21.1(d)⁵, Cboe Exchange, Inc. (“Cboe”) Rule 5.6(a)⁶ and Cboe C2 Exchange, Inc. (“C2”) Rule 6.10(a).⁷

The purpose of this rule change is to provide the Exchange with appropriate flexibility to address different trading characteristics, market models, and the investor base of each class, as well as to handle any System issues that may arise and require the Exchange to temporarily not accept certain order types. This rule is consistent with BZX Options Rule 21.1(d) and (f), EDGX Options Rules 21.1(d) and (f), Cboe Rule 5.6(a) and C2 Rule 6.10(a), each of which provides these exchanges with substantially the same flexibility. This rule text is also consistent with ISE

hold an order, subject to the restrictions set forth in paragraph (l) below with respect to bulk messages submitted through bulk ports, for potential execution. Unless otherwise specified in the Rules or the context indicates otherwise, the Exchange determines which of the following Times-in-Force are available on a class or system basis.”

⁵ EDGX Options Rule 21.1(d), Definitions, provides, “The term ‘Order Type’ shall mean the unique processing prescribed for designated orders, subject to the restrictions set forth in paragraph (j) below with respect to orders and bulk messages submitted through bulk ports, that are eligible for entry into the System. Unless otherwise specified in the Rules or the context indicates otherwise, the Exchange determines which of the following Order Types are available on a class, system, or trading session basis. Rule 21.20 sets forth the Order Types the Exchange may make available for complex orders.” EDGX Options Rule 21.1(f), Definitions, provides, “The term ‘Time in Force’ means the period of time that the System will hold an order, subject to the restrictions set forth in paragraph (j) below with respect to bulk messages submitted through bulk ports, for potential execution. Unless otherwise specified in the Rules or the context indicates otherwise, the Exchange determines which of the following Times-in-Force are available on a class, system, or trading session basis. Rule 21.20 sets forth the Times-in-Force the Exchange may make available for complex orders.”

⁶ Cboe Rule 5.6, Order Types, Order Instructions, and Times-in-Force at subsection (a), Availability, provides, “Unless otherwise specified in the Rules or the context indicates otherwise, the Exchange determines which of the following order types, Order Instructions, and Times-in-Force are available on a class, system, or trading session basis.”

⁷ C2 Rule 6.10, Availability of Orders, at subsection (a) provides, “*Availability*. Unless otherwise specified in the Rules or the context indicates otherwise, the Exchange determines which of the following order types, Order Instructions, and Times-in-Force are available on a class, system, or trading session basis. Rule 6.13 sets forth the order types, Order Instructions, and Times-in-Force the Exchange may make available for complex orders.”

Rules at Options 3, Section 7.

This rule change will not permit the Exchange to discriminate among market participants when determining which order types and times-in-force provisions are available on a class or system basis. The Exchange's proposal allows the Exchange to make certain order types and time-in-force, respectively, available on a class or System basis uniformly for all market participants. For example, if the Exchange determined to make a certain order type or time-in-force unavailable, that order type or time-in-force would not be available for any market participant.

The Exchange would issue an Options Trader Alert to provide notification to Participants that a change is being made to the availability or unavailability of a certain order type or time-in-force. The Exchange notes that in the event of System disruption, the Exchange would notify Participants of the unavailability of any order type and would also provide notification when that order type was available once the disruption was resolved.

The Exchange also proposes to add to Options 3, Section 7 at proposed (v)-(y) and Options 3, Section 14(b) at proposed (16), (17) and (18), references to various existing order types that may be entered into various auction mechanisms on ISE. Specifically, the Exchange proposes to add a reference to both single-leg and Complex Orders entered into the Price Improvement Mechanism, Facilitation Mechanism and Solicited Order Mechanism. These order types exist today within the ISE Rules, however, unlike other order types, they are not mentioned within Options 3, Sections 7 or 14, which list the single-leg and Complex Orders, respectively, available for trading on ISE. Further, the Exchange also proposes to add the Block Order type to Options 3, Section 7 to complete the list of available order types that may be entered into an auction mechanism. The Exchange proposes to add the following rule text into Options 3,

Section 7:

(v) Block Order. A Block Order is an order entered into the Block Order Mechanism as described in Options 3, Section 11(a).

(w) Facilitation Order. A Facilitation Order is an order entered into the Facilitation Mechanism as described in Options 3, Section 11(b).

(x) SOM Order. A SOM Order is an order entered into the Solicited Order Mechanism as described in Options 3, Section 11(d).

(y) A PIM Order. A PIM Order is an order entered into the Price Improvement Mechanism as described in Options 3, Section 13(a).

The Exchange proposes to add the following rule text into Options 3, Section 14:

(16) Complex Facilitation Order. A Complex Facilitation Order is an order entered into the Complex Facilitation Mechanism as described in Options 3, Section 11(c).

(17) Complex SOM Order. A Complex SOM Order is an order entered into the Complex Solicited Order Mechanism as described in Options 3, Section 11(e).

(18) Complex PIM Order. A Complex PIM Order is an order entered into the Complex Price Improvement Mechanism as described in Options 3, Section 13(e).

The Exchange believes the addition of this rule text will make clear that these order types are available.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁹ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The proposed rule change would provide the Exchange with the flexibility to determine the availability of order types and times-in-force on a

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

class and System basis. This flexibility would remove impediments to and perfect the mechanism of a free and open market and a national market system by allowing the Exchange to address the specific characteristics of different classes and different market conditions. The Exchange believes that this proposal serves to protect investors by ensuring that the appropriate order types and times-in-force are tailored to the different class characteristics and by mitigating risks associated with changing market conditions.¹⁰

The Exchange would issue a notification to Participants to provide them notice that a change is being made to the availability or unavailability of a certain order type or time-in-force before implementing the change. In the event of a System issue, the Exchange believes that it is consistent with the Act to temporarily not offer a certain order type to ensure the proper executions of transactions within the System thereby protecting investors and the public interest. The Exchange anticipates that exercising its ability to temporarily not offer order types would be infrequent.

This provision was added to all 6 Nasdaq affiliated markets for the simple markets¹¹ and therefore will ensure consistency between the Exchange rules and that of its affiliates and would remove impediments to and perfect the mechanism of a free and open market and promote just and equitable principles of trade, as well as foster cooperation and coordination with persons engaged in facilitating transactions in securities. The proposed rule change provides the Exchange with substantially the same flexibility currently permitted on BZX Options, EDGX Options, Cboe and C2 as well as ISE.¹² The Exchange believes that this consistency promotes

¹⁰ The Exchange may also determine to temporarily not offer an order type or a time-in-force based on a System issue.

¹¹ See Nasdaq Phlx LLC, The Nasdaq Options Market, LLC, Nasdaq BX, Inc., ISE, Nasdaq GEMX, LLC and Nasdaq MRX, LLC Rules at Options 3, Section 7.

¹² See notes 3-7 above.

market participants' understanding of the rules across the multiple Nasdaq affiliated exchanges and promotes a fair and orderly national options market system. This proposal does not present any novel or unique issues because other exchanges have substantially similar rules.¹³

The Exchange's proposal is not unfairly discriminatory because the Exchange will not discriminate among market participants when determining which order types and times-in-force provisions are available on a class or system basis. The Exchange's proposal allows the Exchange to make certain order types and time-in-force, respectively, available on a class or System basis uniformly for all market participants. For example, if the Exchange determined to make a certain order type or time-in-force unavailable, that order type or time-in-force would not be available for any market participant.

The proposal to add a references to all existing order types that may be entered into auctions into Options 3, Sections 7 and 14 is consistent with the Act. The Exchange believes the addition of the Block Order type, Facilitation Order type, SOM Order type and PIM Order types into Options 3, Section 7 and the addition of the Complex Facilitation Order type, Complex SOM Order type and Complex PIM Order type into Options 3, Section 14 will make clear to market participants the various types of single-leg order and Complex Orders that may be transacted on ISE. The descriptions of these order types merely point at the existing mechanisms.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed rule change will impose any burden on intra-market

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Id.

competition, as the proposed rule change will apply in the same manner to all order types and/or times-in-force, as the Exchange determines, for all Participants. The Exchange does not believe the proposed rule change will impose any burden on inter-market competition because the proposed change provides the Exchange with substantially the same flexibility as the rules of other exchanges.¹⁴ Therefore, the Exchange believes that the proposed rule change will allow it to make determinations regarding the availability of orders that will enable it to remain competitive as markets and market conditions evolve.

The Exchange's proposal does not impose an undue burden on competition because the Exchange's proposal will uniformly make certain order types and time-in-force, respectively, available on a class or System basis for market participants.

The proposal to add the Block Order type, Facilitation Order type, SOM Order type and PIM Order types into Options 3, Section 7 and the Complex Facilitation type, Complex SOM Order type and Complex PIM Order type into Options 3, Section 14b does not impose an undue burden on competition. The addition of these order types would complete the list of single-leg and Complex Order types, which are available to all market participants, and are merely being referenced within the order type rules for greater transparency.

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

No written comments were either solicited or received.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁵ and Rule 19b-4(f)(6) thereunder.¹⁶ Because the proposed rule change does not:

¹⁴ Id.

¹⁵ 15 U.S.C. 78s(b)(3)(A)(iii).

(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, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁷ and Rule 19b-4(f)(6) thereunder.¹⁸

A proposed rule change filed under Rule 19b-4(f)(6)¹⁹ normally does not become operative for 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),²⁰ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative immediately. The Exchange believes that the proposed rule change would provide the Exchange with the flexibility to determine the availability of order types and times-in-force on a class and System basis, allowing the Exchange to address the specific characteristics of different classes and different market conditions. According to the Exchange, this would ensure that the appropriate order types and times-in-force are tailored to the different class characteristics and mitigate risks associated with changing market conditions. The Exchange also believes that referencing all single-leg and Complex Order types makes clear which order types are available to all market

¹⁶ 17 CFR 240.19b-4(f)(6).

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of 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.

¹⁹ 17 CFR 240.19b-4(f)(6).

²⁰ 17 CFR 240.19b-4(f)(6)(iii).

participants. Moreover, the Exchange represents that the proposed rule change will apply in the same manner to all order types and/or times-in-force, as the Exchange determines, for all Participants, and provides the Exchange with substantially the same flexibility as the rules of other exchanges. Lastly, the Exchange argues that waiver of the 30-day operative delay will permit the Exchange to immediately use this ability to make certain order types available and unavailable, as well as enable the Exchange to remain competitive as markets and market conditions evolve. For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.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 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 change 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:

²¹ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-ISE-2020-10 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-ISE-2020-10. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ISE-

2020-10, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

J. Matthew DeLesDernier,
Assistant Secretary.

²² 17 CFR 200.30-3(a)(12), (59).

