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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No.* SR - 2021 - * 01

Amendment No. (req. for Amendments *)

Filing by Nasdaq ISE, LLC

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial *	Amendment *	Withdrawal	Section 19(b)(2) *	Section 19(b)(3)(A) *	Section 19(b)(3)(B) *
☑	☐	☐	☐	☑	☐

Pilot	Extension of Time Period for Commission Action *	Date Expires *
☐	☐	

Rule

☐ 19b-4(f)(1)	☐ 19b-4(f)(4)
☐ 19b-4(f)(2)	☐ 19b-4(f)(5)
☐ 19b-4(f)(3)	☑ 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Section 806(e)(1) *	Section 806(e)(2) *
☐	☐

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934

Section 3C(b)(2) * ☐

Exhibit 2 Sent As Paper Document	Exhibit 3 Sent As Paper Document
☐	☐

Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

A proposal to amend various rules in Options 3 and Options 5.

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * Sun Last Name * Kim

Title * Associate General Counsel

E-mail * Sun.Kim@nasdaq.com

Telephone * (646) 420-7816 Fax

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date 02/18/2021

By John Zecca

(Name *)

(Title *)

EVP and Chief Legal Officer

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

john.zecca@nasdaq.com

Required fields are shown with yellow backgrounds and asterisks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information * Add Remove View	The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.
Exhibit 1 - Notice of Proposed Rule Change * Add Remove View	The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO] -xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)
Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies * Add Remove View	The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO] -xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)
Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications Add Remove View Exhibit Sent As Paper Document ☐	Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.
Exhibit 3 - Form, Report, or Questionnaire Add Remove View Exhibit Sent As Paper Document ☐	Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.
Exhibit 4 - Marked Copies Add Remove View	The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.
Exhibit 5 - Proposed Rule Text Add Remove View	The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.
Partial Amendment Add Remove View	If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

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 proposal to amend various rules in Options 3 and Options 5.

A notice of the proposed rule change for publication in the Federal Register is attached as Exhibit 1. The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

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 of the Exchange (the "Board") on November 5, 2020. 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:

Sun Kim
Associate General Counsel
Nasdaq, Inc.
646-420-7816

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

a. Purpose

The purpose of the proposed rule change is to amend various rules in Options 3

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

2 17 CFR 240.19b-4.

and Options 5. The proposed changes consist of conforming existing rules to current System technology, amending rule text to add greater detail on how certain Exchange functionality operate today, and conforming language within the Exchange's rules to the rules of other exchanges. As such, no System changes to existing functionality are being made pursuant to this proposal. Rather, this proposal is designed to reduce any potential investor confusion as to the features and applicability of certain functionality presently available on the Exchange. These changes are described in detail below, and include amending Exchange rules governing: (1) the Block Order Mechanism ("Block"),[3] (2) the Facilitation Mechanism ("Facilitation"),[4] (3) the Solicited Order Mechanism ("Solicitation"),[5] (4) the Price Improvement Mechanism ("PIM"),[6] (5) Trade Value Allowance ("TVA"),[7] (6) Anti-Internalization,[8] and (7) the exposure mechanism ("Exposure").[9]

Universal Changes

In September 2019, the Exchange amended its regular allocation rule in Options 7, Section 10 (Priority of Quotes and Orders) to make non-substantive changes, among other changes, to replace references to Professional interest with non-Priority Customer

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3 See Options 3, Section 11(a).

4 See Options 3, Section 11(b).

5 See Options 3, Section 11(d).

6 See Options 3, Section 13.

7 See Supplementary Material .03 to Options 3, Section 14.

8 See Options 3, Section 15(a)(3)(A).

9 See Supplementary Material .02 to Options 5, Section 2.

interest.[10] The Exchange now proposes to make similar changes to replace all instances of "Professional" interest with "non-Priority Customer" interest throughout its auction allocation rules in Options 3, Section 11 and Section 13 to align with the changes made in SR-ISE-2019-21.[11] While the term "Professional Orders" is defined within Options 1, Section 1(a)(39) as an order that is for the account of a person or entity that is not a Priority Customer, the Exchange believes that using the term "non-Priority Customer" is more clear in describing the types of market participant to which the allocation applies, and also reduces confusion regarding any reference to Professional Orders or Professional Customer orders.

In addition, the Exchange proposes to make universal changes in its Facilitation and Solicitation rules[12] to clearly delineate between orders and Responses[13] of the same capacity. For example, where the existing rule text currently states "Priority Customer bids (offers)," the Exchange proposes instead to state "Priority Customer Orders and Priority Customer Responses to buy (sell)." The Exchange notes that this is merely a non-substantive change as auction orders and Responses of the same capacity do not get

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10 See Securities Exchange Act Release No. 86947 (September 12, 2019), 84 FR 49165 (September 18, 2019) (SR-ISE-2019-21).

11 Specifically in Options 3, Section 11, the Exchange will amend current subsections (a)(2)(B), (b)(3)(A)-(C) (renumbered to (b)(4)(A)-(C) under this proposal), (c)(7)(A)-(C), (d)(2)(C) (renumbered to (d)(3)(C) under this proposal), and (e)(4)(D). In Options 3, Section 13, the Exchange will amend current subsections (d)(1)-(3) and (e)(5)(i)-(iii).

12 Specifically in Options 3, Section 11, subsections (b)(3)(A)-(C) (renumbered to (b)(4)(A)-(C)), and (d)(2)(A) and (C) (renumbered to (d)(3)(A) and (C)) will be updated.

13 A "Response" is an electronic message that is sent by Members in response to a broadcast message. See Options 3, Section 11.

treated differently for allocation purposes today. The rules for complex Facilitation and Solicitation already distinguish between orders and Responses, so the Exchange is simply amending those complex rules to clearly state how, for example, Priority Customer Complex Orders and Priority Customer Responses get allocated today[14] With the proposed changes, the Exchange seeks to include a similar level of detail within its simple and complex Facilitation and Solicitation rules in order to bring transparency around how allocation takes place in those auction mechanisms today.

Block Order Mechanism

The Exchange proposes minor changes to the current descriptions of the Block execution and allocation process in Options 3, Section 11(a). As discussed below, the proposed Block changes are non-substantive in nature, and are intended to harmonize with the Block rule on its affiliated market, BX Options ("BX") in order to ensure rule consistency between the Exchange and its affiliate offering identical functionality.

First, the Exchange proposes to add "up to the size of the block order" at the end of subsection (a)(2)(A). As amended, the rule will provide that bids (offers) on the Exchange at the time the block order is time the block order is executed that are priced higher (lower) than the block execution price, as well as Responses that are priced higher (lower) than the block execution price, will be executed in full at the block execution price up to the size of the block order. The Exchange is making this non-substantive change to align with BX's Block rule,[15] which will ensure rule consistency for identical functionality across affiliated markets. The language states that better priced interest gets

[14] See Options 3, Section 11(c)(7) and (e)(4).

[15] See BX Options 3, Section 11(a)(2)(A).

executed in full only if there is sufficient size to execute against such interest, which is how block orders are executed and priced on the Exchange and BX today.

Second, the Exchange proposes a non-substantive change in the first sentence of subsection (a)(2)(B) to replace "first and in time priority" with "first in price time priority." As amended, the rule will provide that at the block execution price, Priority Customer Orders and Priority Customer Responses will be executed first in price time priority. This is not a change to the current Block allocation methodology, but rather a non-substantive change for better readability, and to align with BX's Block rule[16] in order to ensure rule consistency for identical functionality across affiliated markets. Block orders will continue to trade at a single execution price that allows the maximum number of contracts of the block order to be executed against both the Responses entered to trade against the order and unrelated interest on the Exchange's order book.

Example 1

Block order is entered to buy 50 contracts @ 1.50

The following Responses are received:

Priority Customer Response 1 to sell 40 contracts @ 1.40

Priority Customer Response 2 to sell 10 contracts @ 1.40

Priority Customer Response 3 to sell 10 contracts @ 1.39

The block execution price would be $1.40 (i.e., the price at which the maximum number of contracts could be executed) and would be executed as follows:

Block order trades 10 with Priority Customer Response 3 @ 1.40

Block order trades 40 with Priority Customer Response 1 @ 1.40

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16 See BX Options 3, Section 11(a)(2)(B).

As shown above, Priority Customer Response 3 would be executed in full since it is priced better than the block execution price and there is sufficient size to execute Response 3 against the block order, while Priority Customer Responses 1 and 2, which are priced at the block execution price, would participate in price time priority – i.e., the remaining 40 contracts would go to Response 1, which was received before Response 2.

Facilitation Mechanism

The Exchange proposes a number of changes to its Facilitation rule, none of which will change the current operation of this technology offering. Many of the proposed changes are intended to align the simple Facilitation rule in Options 3, Section 11(b) with the complex Facilitation rule in Options 3, Section 11(c) where relevant. In October 2018, the Exchange amended its complex order rules to provide greater clarity and additional detail regarding the operation and applicability of complex order functionality, including complex auction mechanisms like complex Facilitation.[17] Accordingly, the Exchange seeks to make aligning changes and update its simple auction mechanism rules to similarly provide the level of detail that now exists in its complex auction mechanism rules. The proposed changes are also intended to align with the simple Facilitation rules of the Exchange's affiliated markets, Nasdaq GEMX ("GEMX") and Nasdaq MRX ("MRX"). The Exchange also proposes to more accurately describe how orders will be allocated in Facilitation's "auto-match" functionality.

In Options 3, Section 11(b), the Exchange proposes to add new subsection

17 See Securities Exchange Act Release No. 84373 (October 5, 2018), 83 FR 51730 (October 12, 2018) (SR-ISE-2018-56) ("Complex Order Filing"). As discussed later in this filing, the Complex Order Filing also clarified the Exchange's complex Solicitation and PIM rules, and the Exchange is proposing to align the simple Solicitation and PIM rules with the complex rules where possible.

(b)(1),[18] which will provide that Orders must be entered into the Facilitation Mechanism at a price that is (A) equal to or better than the NBBO on the same side of the market as the agency order unless there is a Priority Customer order on the same side Exchange best bid or offer, in which case the order must be entered at an improved price; and (B) equal to or better than the ABBO[19] on the opposite side. Orders that do not meet these requirements are not eligible for the Facilitation Mechanism and will be rejected. The Exchange is not proposing any other changes to the current entry requirements for Facilitation. The new subsection (b)(1) would simply provide additional detail about simple Facilitation's existing entry checks, and align to the level of detail currently within the complex Facilitation rule regarding entry checks.[20]

Example 2

Assume the following market:

ISE BBO: 1 x 2 (also NBBO)

CBOE: 0.75. x 2.25 (next best exchange quote)

Facilitation order is entered to buy 50 contracts @ 2.05

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18 As a result, current subsections (b)(1) - (3) will be renumbered as (b)(2) - (4). The Exchange will also renumber current subsection (b)(3)(D) as subsection (b)(5).

19 The term "Away Best Bid or Offer" or "ABBO" means the displayed National Best Bid or Offer not including the Exchange's Best Bid or Offer. See Options 1, Section 1(a)(4).

20 See Options 3, Section 11(c)(1) and (c)(2). Complex Facilitation refers to the Exchange's best bid or offer instead of the NBBO or ABBO. There is no NBBO for complex orders as complex orders may be executed without consideration of any prices that might be available on other exchanges trading the same options contracts. See Options 3, Section 14(d). Additionally, executions of legs of complex orders are exceptions to the prohibition on trade-throughs. See Options 5, Section 2(b)(7).

No Responses are received.

The Facilitation order executes with resting 50 lot quote @ 2. In this instance, the Facilitation order is able to begin crossed with the contra side ISE BBO because in execution, the resting 50 lot quote @ 2 is able to provide price improvement to the facilitation order.

In renumbered subsection (b)(2), the Exchange proposes to add language to describe the content of the broadcast message sent to Members upon entry of an order into simple Facilitation. In particular, the Exchange proposes to specify that the broadcast message includes the series, price and size of the Agency Order, and whether it is to buy or sell. Although this change reflects current functionality, the existing rule is silent in this regard and only indicates that a broadcast message is sent upon the order's entry into the mechanism. Identical language currently exists in the rules governing simple Facilitation on GEMX and MRX, which operate in the same way as ISE's simple Facilitation.[21]

In renumbered subsection (b)(3), the Exchange proposes to replace the words "must not exceed" with "will only be considered up to" in order to align with identical language in the complex Facilitation rule.[22] This change more accurately describes that the System will cap Responses to the size of the auction for purposes of allocation methodology.

In renumbered subsection (b)(4)(A), the Exchange proposes to provide that the facilitation order will be cancelled at the end of the exposure period if an execution

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21 See GEMX and MRX Options 3, Section 11(b)(1).

22 See Options 3, Section 11(c)(6).

would take place at a price that is inferior to the best bid (offer) on the Exchange. This is a non-substantive change that makes clear that any executions in Facilitation will comply with the general prohibition on trade-throughs in Options 5, Section 2(a). Identical language is included in the rules governing simple Facilitation on GEMX and MRX.[23]

In renumbered subsections (b)(4)(B) and (b)(4)(C), the Exchange proposes to amend the rule to provide that the facilitating Member will be allocated up to forty percent (40%) (or such lower percentage requested by the Member) of the original size of the facilitation order. If the Member requests a lower allocation percentage, the contra-side order would receive an allocation consistent with the percentage requested by the Member. Regardless of the Member's request, the contra-side order would still be responsible for executing up to the full size of the agency order if there is not enough interest to execute the agency order at a particular price. Similar language indicating that the Member may request a lower allocation percentage than 40% is currently included in the complex Facilitation rule, which operate in the same way as the simple Facilitation in this manner.[24] For greater consistency between its simple and complex Facilitation rules, the Exchange also proposes to make aligning, non-substantive changes in the complex Facilitation rule to provide that the Member will "be allocated up to" forty percent. The current complex Facilitation language provides that the Member will "execute at least

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23 See GEMX and MRX Options 3, Section 11(b)(3).

24 See Options 3, Section 11(c)(7)(B) and (C). Other options exchanges such as BX provide similar functionality that allows members using an auction mechanism to configure allocation priority. See, e.g., BX Options 3, Section 13, which provides a similar feature for the BX Options Price Improvement Auction ("PRISM") called "Surrender."

forty percent" or that the Member will "be allocated at least forty percent."[25] The non-substantive language proposed for complex Facilitation will therefore serve to harmonize the complex rule with the amended simple rule.

The Exchange also proposes to more accurately describe Facilitation's auto-match functionality, which provides an enhanced price improvement opportunity for the agency order by permitting the contra-side order to further participate in the cross by auto-matching the price and size of competing interest providing price improvement from other market participants.[26] The rule currently provides that upon entry of an order into the Facilitation Mechanism, the facilitating Electronic Access Member can elect to automatically match the price and size of orders, quotes and responses received during the exposure period up to a specified limit price or without specifying a limit price. In this case, the facilitating Electronic Access Member will be allocated its full size at each price point, or at each price point within its limit price is a limit is specified, until a price point is reached where the balance of the order can be fully executed.[27] The Exchange proposes to state that if a Member elects to auto-match, the facilitating Electronic Access Member will be allocated <u>the aggregate size of all competing quotes, orders, and Responses</u> (instead of "its full size") at each price point, or at each price point <u>up to the</u>

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25 <u>Id.</u>

26 <u>See</u> Securities Exchange Act Release No. 62644 (August 4, 2010), 75 FR 48395 (August 10, 2010) (SR-ISE-2010-61) ("Auto-Match Filing"). As discussed later in this filing, the Auto-Match Filing also introduced the auto-match feature on PIM. As such, the Exchange is proposing to make similar changes in PIM's auto-match rule as proposed for Facilitation's auto-match rule.

27 <u>See</u> Options 3, Section 11(b)(3)(C) (renumbered to Section 11(b)(4)(C) under this proposal).

specified limit price (instead of "within its limit price") if a limit is specified, until a price point is reached where the balance of the order can be fully executed. The Exchange believes that the modified language more accurately explains how the functionality works today, and better aligns with how this feature is described in the Auto-Match Filing.[28] For greater consistency within its Rulebook, the Exchange will also make the same changes in the complex Facilitation auto-match rule in Options 3, Section 11(c)(7)(C).

Lastly, the Exchange proposes to add at the end of Supplementary Material .01 to Options 3, Section 11 that any solicited contra orders entered by Members into the Facilitation Mechanism to trade against Agency Orders may not be for the account of a Nasdaq ISE Market Maker that is assigned to the options class.[29] This language was included in the approval order to SR-ISE-2006-78 to allow solicited transactions in ISE's Facilitation Mechanism, so the proposed change will import that prohibition into the rule text for greater transparency.

Solicited Order Mechanism

The Exchange proposes a number of changes to its Solicitation rule, none of which will change the current operation of this technology offering.

In Options 3, Section 11(d), the Exchange proposes to add new subsection

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[28] The Auto-Match Filing describes the auto-match feature as allowing the initiating member to submit a contra-side order that will automatically match the price and size set forth by the competing interest from other market participants (i.e., auction responses, quotes, and orders) at any price level during the auction or up to a specified limit price if a limit is specified.

[29] See Securities Exchange Act Release No. 55557 (March 29, 2007), 72 FR 16838 (April 5, 2007) (SR-ISE-2006-78) (Order Granting Approval of Proposed Rule Change Relating to Facilitation Mechanism).

(d)(1),[30] which will provide that orders must be must be entered into the Solicited Order Mechanism at a price that is equal to or better than the NBBO on both sides of the market; provided that, if there is a Priority Customer order on the Exchange best bid or offer, the order must be entered at an improved price. Orders that do not meet these requirements are not eligible for the Solicited Order Mechanism and will be rejected. The Exchange is not proposing any other changes to the current entry requirements for Solicitation. The new subsection (d)(1) would simply provide additional detail about simple Solicitation's existing entry checks, and align to the level of detail currently within the complex Solicitation rule regarding entry checks.[31]

Example 3

Assume the following market:

ISE BBO: 1 x 2 (also NBBO)

CBOE: 0.75. x 2.25 (next best exchange quote)

Solicitation order is entered to buy 500 contracts @ 2.05

The Solicitation order is rejected upon entry for being crossed with the NBBO on the contra side. In contrast to Example 2 above for Facilitation, the Solicitation order in this instance is not able to begin crossed with the contra side ISE BBO because of the all-or-

[30] As a result, current paragraphs (d)(1) - (3) will be renumbered accordingly. The Exchange will also renumber current paragraph (d)(2)(D) as paragraph (d)(4).

[31] See Options 3, Section 11(e)(1). Complex Solicitation refers to the Exchange's best bid or offer instead of the NBBO. As noted above, there is no NBBO for complex orders, and executions of legs of complex orders are exceptions to the prohibition of trade-throughs. See supra note 20.

none contingency of the Solicitation order.[32]

In renumbered subsection (d)(2), the Exchange proposes to add language to describe the content of the broadcast message sent to Members upon entry of an order into simple Solicitation. In particular, the Exchange proposes to specify that the broadcast message includes the series, price and size of the Agency Order, and whether it is to buy or sell. While this change reflects current functionality, the existing rule is silent in this regard and only indicates that a broadcast message is sent upon the order's entry into the mechanism. Identical language already exists in the rules governing simple Solicitation on GEMX and MRX, which operate in the same way as the ISE's simple Solicitation.[33]

Lastly, the Exchange also proposes technical changes in renumbered subsection (d)(3) to correct the internal lettering and cross-cites within paragraphs (A) through (C).

Price Improvement Mechanism

The Exchange proposes a number of changes to the PIM rule, none of which will change the current operation of this technology offering. As noted above, many of these modifications are similar to the changes proposed for Facilitation.

The Exchange proposes in Options 3, Section 13(b)(2) to delete "national best bid or offer" as NBBO is already defined in subsection (b)(1) above. The Exchange proposes in subsection (c)(2) to provide that responses in the PIM (i.e., "Improvement Orders") will only be considered up to the size of the Agency Order. The proposed amendment

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32 See Options 3, Section 11(d) (requiring that each Solicitation order be designated as all-or-none).

33 See GEMX and MRX Options 3, Section 11(d)(1).

will specifythat the System will cap the size of the Improvement Orders to the auction size for purposes of the allocation methodology. This is similar to the change proposed above for simple Facilitation, and also aligns to identical language in the complex PIM rule.[34] The Exchange also proposes in subsection (c)(3) to amend the internal numbering from (1) and (2) to (i) and (ii) for greater numbering consistency within the PIM rule.

In subsection (d)(3), which describes how allocation and execution takes place in simple PIM, the Exchange proposes that the Counter-Side Order will be allocated the greater of one contract or 40% (or such lower percentage requested by the Member) of the initial size of the Agency Order. Similar to Facilitation as discussed above, the System currently permits Members entering orders into PIM to elect to receive a percentage allocation that is less than 40%, although the current rule is silent in this regard. If the Member requests a lower allocation percentage, the Counter-Side Order would receive an allocation consistent with the percentage requested by the Member. Regardless of the Member's request, the Counter-Side Order would still be responsible for executing up to the full size of the agency order if there is not enough interest to execute the agency order at a particular price. Complex PIM, which shares the same allocation feature as simple PIM, already has this concept within the rule, so the proposed changes will align the simple PIM rule with the complex PIM rule.[35]

The Exchange also proposes to more accurately describe PIM's auto-match functionality in a similar manner as Facilitation's auto-match functionality, as discussed

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34 See Options 3, Section 13(e)(4)(i).

35 See Options 3, Section 13(e)(5)(iii). As noted above, BX has a similar feature called Surrender for its PRISM auction. See supra note 24.

above. In this instance, the Exchange proposes to amend the third sentence of subsection (d)(3) to provide: "If a Member elects to auto-match, the Counter-Side Order will be allocated the aggregate size of all competing quotes, orders, and Responses at each price point up to the specified limit price if a limit is specified, until a price point is reached where the balance of the order can be fully executed." Similar to the proposed amendments to simple Facilitation's auto-match, the Exchange believes that the proposed language for simple PIM's auto-match more clearly explains how the functionality works today, and better aligns with how this feature is described in the Auto-Match Filing. For greater consistency within its Rulebook, the Exchange will also make the same changes in the complex PIM auto-match rule in Options 3, Section 13(e)(5)(iii).

The Exchange further proposes technical amendments in subsection (d)(3) to replace all instances of "Counter-Side order" as "Counter-Side Order" to use the correct terminology. Lastly, the Exchange proposes to provide in Supplementary Material .04 to Options 3, Section 13 that PIMs will not queue or overlap in any manner, <u>except as described in Options 3, Section 11(f) and (g)</u>. Sections 11(f) and (g) set forth the governing provisions for concurrent complex auctions and concurrent complex and simple auctions. The proposed changes to add in the cross-cites to Sections 11(f) and (g) will make clear that two simple or two complex PIM auctions are not permitted to run concurrently, but that a simple PIM auction may run concurrently with a complex PIM auction.

<u>Trade Value Allowance</u>

The Exchange proposes a non-substantive change to amend the TVA rule in Supplementary Material .03 to Options 3, Section 14 to add a cross-cite to the complex

PIM rule in Options 3, Section 13, which was inadvertently omitted when the Exchange relocated the complex auctions rules in a prior filing.[36] In SR-ISE-2019-05, the original cross-cite within the TVA rule was updated from Supplementary Material .08 to Rule 722 to Rule 716 (now Options 3, Section 11). Supplementary Material .08 to Rule 722 set forth the complex auction mechanism rules, namely complex Facilitation, Solicitation, and PIM. SR-ISE-2019-05 relocated complex Facilitation and Solicitation to Rule 716 (now Options 3, Section 11), but moved complex PIM to Rule 723 (now Options 3, Section 13). As such, the original cross-cite in the TVA rule should have been updated to include complex PIM in Rule 723 but was inadvertently omitted.

TVA is a functionality that allows complex orders to trade outside of their expected notional trade amount by a specified amount. The amount of TVA permitted may be determined by the Member, or a default value determined by the Exchange and announced to Members.[37] The TVA rule currently provides, however, that any amount of TVA is permitted in auction mechanisms pursuant to Options 3, Section 11 when auction orders do not trade solely with their contra-side order. The Exchange now proposes to add a cross-cite to Options 3, Section 13 to specify that TVA also applies to complex PIM auctions in this manner. The Exchange will also provide that TVA applies to "complex" mechanisms in the cited rules. These changes will align the rule text to how TVA is presently implemented in the System. The Exchange notes that its complex auction mechanisms provide an opportunity for market participants to respond with

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36 See Securities Exchange Release No. 85308 (March 13, 2019), 84 FR 10136 (March 19, 2019) (SR-ISE-2019-05).

37 See Supplementary Material .03 to Options 3, Section 14.

better-priced interest that could execute against an Agency Order. As such, the Exchange believes that it is appropriate to ensure that paired orders entered into complex Facilitation, Solicitation and PIM that are broken up due to better-priced interest are actually executed against such better-priced interest, and are not restricted from trading due to TVA settings of one or more Members.

Anti-Internalization

The Exchange proposes to amend its anti-internalization ("AIQ") rule in Options 3, Section 15(a)(3)(A). Specifically, the Exchange proposes to add that AIQ does not apply during the opening process or reopening process following a trading halt pursuant to Options 3, Section 8 to provide more specificity on how this functionality currently operates. The Exchange notes that the same procedures used during the opening process are used to reopen an option series after a trading halt, and therefore proposes to specify that AIQ will not apply during an Opening Process (i.e., the opening and halt reopening process) in addition to an auction, as currently within the Rule. AIQ is unnecessary during an Opening Process due to the high level of control that Market Makers exercise over their quotes during this process. The proposed changes will align the Exchange's AIQ rule with BX's AIQ rule, which sets forth materially identical functionality.[38]

Exposure Mechanism

Under the linkage rules, the Exchange cannot execute orders at a price that is inferior to the NBBO, nor can the Exchange place an order on its book that would cause the Exchange best bid or offer to lock or cross another exchange's quote.[39] In these

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38 See BX Options 3, Section 15(c)(1).

39 See Options 5, Sections 2 and 3. See also Options 3, Section 5(d)

circumstances, Supplementary Material .02 to Options 5, Section 2 sets forth an Exposure mechanism for automated order handling where eligible incoming orders are exposed at the NBBO to all Members to give them an opportunity to execute the order at the NBBO price or better. The Exchange proposes to make clear within Supplementary Material .02 that an incoming order will be eligible for Exposure if the order is priced at or through the ABBO, when the ABBO is better than the Exchange BBO.

Supplementary Material .02 to Options 5, Section 2 currently provides that when the automatic execution of an incoming order would result in an impermissible Trade-Through, such order would be exposed at the current NBBO to all Exchange Members for a time period established by the Exchange not to exceed one (1) second. Supplementary Material .01 to Options 5, Section 3, however, currently provides that when the price of an incoming limit order that is not executable upon entry would lock or cross a Protected Quotation, such order would be handled in accordance with the Exposure process in Supplementary Material .02 to Options 5, Section 2.[40] The Exchange proposes to modify Supplementary Material .02 by removing the portion related to the automatic execution of an incoming order that would result in an impermissible Trade-Through, and instead providing within this Rule that Exposure will initiate when an incoming order is priced **at or** through the ABBO, when the ABBO is better than the Exchange BBO. The current language in Supplementary Material .02 only specifies that Exposure is initiated when the price of the incoming order is crossed with

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40 Such order would also be handled in accordance with Supplementary Material .04 (Non-Customer Orders that opt out of the Exposure mechanism) or .05 (Sweep Orders) to Options 5, Section 2, as applicable. See Supplementary Material .01 to Options 5, Section 3.

the ABBO (i.e., would result in an impermissible Trade-Through), but does not specify the scenario in Supplementary Material .01 to Options 5, Section 3 when the price is locked. As such, the proposed changes seek to enhance the accuracy of the rules by codifying both scenarios within the Exposure rule in Supplementary Material .02.

Technical Amendments

The Exchange proposes technical changes in the Supplementary Material to Options 3, Section 11. First, the Exchange proposes in Supplementary Material .03 to update an incorrect cross-cite from Options 3, Section 22(d) to Section 22(b), which limits principal transactions. Second, the Exchange will make corrective changes to renumber Supplementary Material .07 to .05, and to update the cross-cite to paragraph (a)(2)(i) therein to paragraph (a)(2)(A). Third, the Exchange proposes in renumbered Supplementary Material .07 to update the reference to "Block Mechanism" to "Block Order Mechanism" to use the correct terminology.

Lastly, the Exchange proposes some harmonizing changes throughout its Rulebook to align with the rule numbering and titles with that of its affiliates. Specifically, the Exchange proposes to add a new Options 4B and reserve it in the Rulebook in order to harmonize its Options Rule numbering with that of its affiliates, GEMX and Nasdaq PHLX LLC ("Phlx"). The Exchange also proposes to retitle General 4 (currently titled "Regulation") to "Registration Requirements" to harmonize its General Rule titles with that of its affiliates The Nasdaq Stock Market LLC and Nasdaq BX, Inc.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[41] in general, and furthers the objectives of Section 6(b)(5) of the Act,[42] 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 Exchange believes that its proposal is consistent with the protection of investors and public interest as all of the proposed changes will increase transparency around how various existing Exchange mechanisms work today. As such, no System changes to existing functionality are being made pursuant to this proposal. Rather, this proposal is designed to reduce any potential investor confusion as to the features and applicability of certain functionality presently available on the Exchange.

Furthermore, many of the proposed changes seek to provide greater harmonization between the rules of the Exchange and its affiliates (notably rules related to Block, Facilitation, Solicitation, and AIQ), or between the Exchange's own simple and complex auction rules (notably for simple and complex Facilitation, Solicitation, and PIM).[43] The Exchange believes that these harmonizing changes would result in greater uniformity, and ultimately less burdensome and more efficient regulatory compliance by market participants. As such, the proposed rule change would foster cooperation and

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41 15 U.S.C. 78f(b).

42 15 U.S.C. 78f(b)(5).

43 As noted above, the Exchange seeks to add granularity to its simple auction rules to align with the level of detail that currently exists within its complex auction rules. See supra note 17.

coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange also believes that more consistent rules will increase the understanding of the Exchange's operations for Members that are also members on the Exchange's affiliates, thereby contributing to the protection of investors and the public interest.

Specifically, the Exchange believes that the proposed universal changes to replace all instances of Professional interest with non-Priority Customer interest throughout the Exchange's auction allocation rules will add greater consistency within the Exchange's rules. As discussed above, the Exchange previously made the same modifications within its standard allocation rule in Options 7, Section 10, so the proposed changes will promote more consistent terminology in the rules and make them easier for market participants to navigate and comprehend. The Exchange also believes that using the term "non-Priority Customer" reduces any potential confusion regarding any reference to Professional Orders or Professional Customer orders. In addition, the Exchange believes that clearly delineating between orders and Reponses of the same capacity in the Facilitation and Solicitation rules will bring clarity and transparency around how allocation takes place in those auction mechanisms. The complex Facilitation and Solicitation rules currently differentiate between orders and Responses,[44] so the Exchange is aligning the simple rule to the level of granularity already found in the complex rule while also specifying the capacity of such order or Response within the simple and complex rules. As noted above, the Exchange is not changing the current

44 See supra note 14.

allocation methodology, and auction orders and Responses of the same capacity do not get treated differently for allocation purposes today.

The Exchange believes that the proposed changes to the Block rule are consistent with the protection of investors and the public interest as the modifications will more accurately reflect the handling of auctions in Block, specifically as it relates to execution and allocation. The proposed changes will specify that better priced interest entered into Block gets executed in full only if there is sufficient size to execute against such interest, and that Priority Customer interest gets executed first in price time priority. This specificity will be helpful to market participants utilizing Block and provide greater certainty as to how their Block orders will be executed and allocated. The Exchange also believes that the proposed changes will continue to ensure a fair and orderly market by maintaining and protecting the priority of Priority Customer orders, while still affording the opportunity for all market participants to seek liquidity and potential price improvement during each Block auction commenced on the Exchange. As noted above, the Exchange is not proposing any changes to the current execution or allocation methodology but believes that the changes will promote consistency with the rulebook of its affiliated exchange BX, which offers identical functionality.[45]

Similarly, the Exchange believes that specifying the entry checks for simple Facilitation and Solicitation is consistent with the protection of investors and the public interest by providing greater consistency to the level of granularity currently within the complex Facilitation and Solicitation entry checks.[46] The Exchange also believes it is

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45 See supra notes 15-16, and accompanying text.

46 See supra notes 20 and 31, and accompanying text.

appropriate to require that the Facilitation order be entered at an improved price if there is a Priority Customer order on the same side Exchange best bid or offer as the agency order. The Exchange believes this will ensure a fair and orderly market by maintaining priority of orders and quotes and protecting Priority Customer orders, while still affording the opportunity to seek liquidity and for potential price improvement during each Facilitation auction commenced on the Exchange. For the same reasons, the Exchange believes that it is appropriate to require that the Solicitation order be entered at an improved price if there is a Priority Customer order on the Exchange best bid or offer.

The Exchange further believes that it is consistent with the Act to specify the contents of the broadcast message sent to Members upon entry of an order into simple Facilitation and Solicitation as the changes will remove any potential confusion about what type of auction information is disseminated. Currently, the broadcast message in simple Facilitation and Solicitation includes the series, price, and size of the Agency Order, and whether it is to buy or sell. As this information is helpful to auction participants, the Exchange believes that codifying this information into the simple Facilitation and Solicitation rules may encourage greater participation within these mechanisms, thereby increasing the opportunity for options orders to receive executions on the Exchange. The Exchange is not proposing any changes to the current content of the broadcast message but wants to make this clear in its rules, which, with this change, would be consistent with the rules of its affiliated exchanges that offer identical functionality.[47] Likewise, the proposed change to add that a facilitation order would be cancelled at the end of the exposure period if an execution would take place at a price

47 See supra notes 21 and 33.

that is inferior to the best bid (offer) on the Exchange is intended to ensure compliance with the general prohibition on trade-throughs in Options 5, Section 2(a), and to ensure consistency across the rules of the Exchange and its affiliates that offer identical functionality.[48]

The proposed changes to replace “must not exceed” with “will only be considered up to” in the simple Facilitation and PIM rules are intended to more accurately describe that the System will cap the size of Responses to the size of the agency order for purposes of allocation. The Exchange is not amending current System behavior; rather, the modifications will more clearly articulate the handling of Responses by the System. In addition, the proposed changes will serve to harmonize the simple and complex auction rules, thereby resulting in greater uniformity and ultimately less burdensome and more efficient regulatory compliance by market participants.[49]

The Exchange believes that its proposal to specify in the simple Facilitation and PIM rules that an initiating Member may elect to receive a percentage allocation lower than 40% is consistent with the Act. This feature provides an initiating Member that submits an order into Facilitation or PIM with the flexibility to configure its allocation percentage up to the full 40% entitlement. The Exchange notes that regardless of the Member’s instruction, the contra-side order would still be responsible for executing up to the full size of the agency order if there is not enough interest to execute the agency order at a particular price. The Exchange continues to believe that the 40% allocation entitlement is consistent with the statutory standards for competition and free and open

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48 See supra note 23.

49 See supra notes 22 and 34.

markets by promoting price competition within Facilitation and PIM as Members would still have a reasonable opportunity to compete for a significant percentage of the incoming order. The Exchange also notes that the configurable 40% allocation entitlement for simple Facilitation and PIM is consistent with the configurable allocation entitlements in place on complex Facilitation and PIM as well as on its affiliated exchange, BX.[50] Accordingly, the Exchange believes that the proposed changes will promote consistency across the rulebooks of exchanges offering identical functionality and within its own Rulebook as well.

With respect to the proposed changes to the Facilitation and PIM auto-match feature, the Exchange is amending the current rule text so that it more accurately explains how the Exchange will allocate an order designated for auto-match today. As discussed above, the Exchange is not making any substantive changes to the allocation procedure itself; rather the proposed changes are intended to better align how this feature is described in the Auto-Match Filing.[51] Similarly, the Exchange believes that the proposed change in Supplementary Material .01 to Options 3, Section 11 to add the provision that any solicited contra orders entered by Members into the Facilitation Mechanism to trade against Agency Orders may not be for the account of a Nasdaq ISE Market Maker that is assigned to the options class will better align the rule text with related filing. As discussed above, this restriction was included in the approval order to the rule filing that

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[50] See supra notes 24 and 35.

[51] See supra note 28.

allowed solicited transactions in the Facilitation Mechanism, so the Exchange will import that language into the rule text for greater transparency.[52]

The proposed change in Supplementary Material .04 to Options 3, Section 13 to provide that PIMs will not queue or overlap in any manner, except as described in Options 3, Section 11(f) and (g) will make clear that two simple or complex PIM auctions are not permitted to run concurrently, but that a simple PIM auction may run concurrently with a complex PIM auction. The Exchange believes that this change will reduce any potential confusion around how simultaneous PIM auctions are processed by the System.

The Exchange believes that the proposed change to the TVA rule is a non-substantive change to say that any amount of TVA is permitted in complex PIM (in addition to all of the other complex auction mechanisms in Options 3, Section 11). This is a corrective change as the cross-cite to complex PIM within the TVA rule was inadvertently dropped in a prior filing that relocated the complex auction rules.[53] As noted above, the Exchange's complex auction mechanisms provide an opportunity for market participants to respond with better-priced interest that could execute against an Agency Order. Accordingly, the Exchange believes that it is appropriate to ensure that paired orders entered into complex Facilitation, Solicitation and PIM that are broken up due to better-priced interest are actually executed against such better-priced interest, and are not restricted from trading due to TVA settings of one or more Members.

The Exchange believes its proposal to provide that AIQ will not apply during an Opening Process (i.e., the opening process or halt reopening process) will more

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52 See supra note 29.

53 See supra note 36.

accurately state how this functionality currently operates. AIQ prevents Market Makers from trading against their own quotes and orders. While the Exchange believes that this protection is useful for Market Makers to manage their trading during regular market hours, applying AIQ is unnecessary during an Opening Process due to the high level of control that Market Makers already exercise over their quotes during this process. Furthermore, the proposed AIQ changes will promote consistency with the rulebook of its affiliated exchange BX, which offers identical functionality.[54]

The Exchange believes that its proposal to provide that Exposure will initiate when an incoming order is priced at or through the ABBO, when the ABBO is better than the Exchange BBO, is consistent with the Act. As discussed above, the current language in Supplementary Material .02 only specifies that Exposure is initiated when the price of the incoming order is crossed with the ABBO (i.e., would result in an impermissible Trade-Through), but does not specify the scenario in Supplementary Material .01 to Options 5, Section 3 when the price is locked. Supplementary Material .01 to Options 5, Section 3, however, also currently provides that when the price of an incoming limit order that is not executable upon entry would lock or cross a Protected Quotation, such order would be handled in accordance with the Exposure process in Supplementary Material .02 to Options 5, Section 2. As such, the proposed changes will enhance the accuracy of the rules by codifying both scenarios within the Exposure rule in Supplementary Material .02, and will continue to ensure that such order complies with the general prohibition on trade-throughs in Options 5, Section 2(a).

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54 See supra note 38.

The Exchange further believes that the technical changes it is proposing throughout Options 3 are non-substantive changes intended to enhance the accuracy of the Exchange's Rulebook, which will alleviate potential confusion as to the applicability of its rules. As discussed above, these changes consist of updating internal rule lettering and cross-cites, and using correct terminology. Lastly, the Exchange believes that the harmonizing changes to add a new Options 4B in its Rulebook and to retitle General 4, each as discussed above, will serve to further harmonize its Rule numbering and titling with that of its affiliates, thereby promoting efficiency and conformity of its processes with those of its affiliated exchanges.

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 not necessary or appropriate in furtherance of the purposes of the Act. As indicated above, no System changes to existing functionality are being made pursuant to this proposal; rather, this proposal is designed to reduce any potential investor confusion as to the features and applicability of certain functionality presently available on the Exchange. Therefore, the proposed changes are designed to enhance clarity and consistency in the Exchange's Rulebook.

Furthermore, many of the proposed changes seek to provide greater harmonization between the rules of the Exchange and its affiliates, and therefore promotes fair competition among the options exchanges. In particular, the proposed changes discussed above for Block and AIQ are based on BX rules governing identical functionality,[55] and the Facilitation and Solicitation changes around broadcast message

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55 See BX Options 3, Section 11(a) (Block) and Section 15(c)(1) (AIQ).

content and trade-through prohibition compliance (Facilitation only) are based on GEMX and MRX rules governing identical functionality.[56] The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues who offer similar functionality. The Exchange believes that the proposed rule change will enhance competition among the various markets for auction execution, potentially resulting in more active trading in auction mechanisms across all options exchanges.

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

Not Applicable.

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)[57] of the Act and Rule 19b-4(f)(6) thereunder[58] 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

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56 See GEMX and MRX Options 3, Section 11(b)(1) (Facilitation broadcast message), Options 3, Section 11(d)(1) (Solicitation broadcast message), and Options 3, Section 11(b)(3) (Facilitation executions trade-through compliance).

57 15 U.S.C. 78s(b)(3)(A)(iii).

58 17 CFR 240.19b-4(f)(6).

interest.

The proposed rule change does not significantly affect the protection of investors or the public interest or impose a significant burden on competition. The proposed changes consist of conforming existing rules to current System technology, amending rule text to add greater detail on how certain Exchange functionality operate today, and conforming language within the Exchange's rules or to the rules of other exchanges for greater consistency. As indicated above, no System changes to existing functionality are being made pursuant to this proposal. Rather, this proposal is designed to reduce any potential investor confusion as to the features and applicability of certain functionality presently available on the Exchange.

Specifically, the proposed universal changes to replace all instances of Professional interest with non-Priority Customer interest throughout the Exchange's auction allocation rules do not significantly affect the protection of investors or the public interest or impose a significant burden on competition because the proposed changes will add greater consistency within the Exchange's rules. As discussed above, the Exchange previously made the same modifications within its standard allocation rule in Options 7, Section 10, so the proposed changes will promote more consistent terminology in the rules and make them easier for market participants to navigate and comprehend. The Exchange also believes that using the term "non-Priority Customer" reduces any potential confusion regarding any reference to Professional Orders or Professional Customer orders. In addition, the Exchange believes that clearly delineating between orders and Reponses of the same capacity in the Facilitation and Solicitation rules will bring clarity and transparency around how allocation takes place in those auction mechanisms. The complex Facilitation and Solicitation rules currently differentiate between orders and Responses,[59] so the Exchange is aligning the simple rule to the level of granularity already found in the complex rule while also specifying the capacity of such order or Response within the simple and complex rules. As noted above, the Exchange is not changing the current allocation methodology, and auction orders and Responses of the same capacity do not get treated differently for allocation purposes today.

The Exchange believes that the proposed changes to the Block rule do not significantly affect the protection of investors or the public interest or impose a significant burden on competition because the Exchange is not proposing any changes to the current execution or allocation methodology; rather, the proposed changes are intended to harmonize the Exchange's Block rule with BX's rule,[60] thereby promoting rule consistency among the affiliated markets for identical functionality. Furthermore, the modifications will more accurately reflect the handling of auctions in Block, specifically as it relates to execution and allocation. The proposed changes will make clear that better priced interest entered into Block gets executed in full only if there is sufficient size to execute against such interest, and that Priority Customer interest gets executed first in price time priority. This specificity will be helpful to market participants utilizing Block and provide greater certainty as to how their Block orders will be executed and allocated. The Exchange also believes that the proposed changes will continue to ensure a fair and orderly market by maintaining and protecting the priority of Priority Customer orders, while still affording the opportunity for all market participants

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59 See supra note 14.

60 See supra notes 15-16, and accompanying text.

to seek liquidity and potential price improvement during each Block auction commenced on the Exchange.

Similarly, the Exchange believes that specifying the entry checks for simple Facilitation and Solicitation is consistent with the protection of investors and the public interest by providing greater consistency to the level of granularity currently within the complex Facilitation and Solicitation entry checks.[61] The Exchange also believes it is appropriate to require that the Facilitation order be entered at an improved price if there is a Priority Customer order on the same side Exchange best bid or offer as the agency order. The Exchange believes this will ensure a fair and orderly market by maintaining priority of orders and quotes and protecting Priority Customer orders, while still affording the opportunity to seek liquidity and for potential price improvement during each Facilitation auction commenced on the Exchange. For the same reasons, the Exchange believes that it is appropriate to require that the Solicitation order be entered at an improved price if there is a Priority Customer order on the Exchange best bid or offer.

The Exchange further believes that specifying the contents of the broadcast message sent to Members upon entry of an order into simple Facilitation and Solicitation does not significantly affect the protection of investors or the public interest or impose a significant burden on competition because the Exchange is not proposing any changes to the current content of the broadcast message but rather, adding a level of granularity that is consistent with the rules of its affiliated exchanges that offer identical functionality.[62] Furthermore, the changes will remove any potential confusion about what type of auction

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[61] See supra notes 20 and 31, and accompanying text.

[62] See supra notes 21 and 33.

information is disseminated. Currently, the broadcast message in simple Facilitation and Solicitation includes the series, price, and size of the Agency Order, and whether it is to buy or sell. As this information is helpful to auction participants, the Exchange believes that codifying this information into the simple Facilitation and Solicitation rules may encourage greater participation within these mechanisms, thereby increasing the opportunity for options orders to receive executions on the Exchange. The proposed change to add that a facilitation order would be cancelled at the end of the exposure period if an execution would take place at a price that is inferior to the best bid (offer) on the Exchange does not significantly affect the protection of investors or the public interest or impose a significant burden on competition because the proposed language is copied from the Exchange's affiliated markets that offer identical functionality.[63] As discussed above, the proposed change also adds clarity, specifically around compliance with the general prohibition on trade-throughs in Options 5, Section 2(a).

The proposed changes to replace "must not exceed" with "will only be considered up to" in the simple Facilitation and PIM rules are intended to more accurately describe that the System will cap the size of Responses to the size of the Agency Order for purposes of allocation. The Exchange is not amending current System behavior; rather, the modifications will more clearly articulate the handling of Responses by the System. In addition, the proposed changes will serve to harmonize the simple and complex auction rules, thereby resulting in greater uniformity and ultimately less burdensome and more efficient regulatory compliance by market participants.[64]

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63 See supra note 23.

64 See supra notes 22 and 34.

The Exchange believes that its proposal to specify in the simple Facilitation and PIM rules that an initiating Member may elect to receive a percentage allocation lower than 40% do not significantly affect the protection of investors or the public interest. The Exchange notes that the configurable 40% allocation entitlement for simple Facilitation and PIM is consistent with the configurable allocation entitlements in place on complex Facilitation and PIM as well as on its affiliated exchange.[65] Accordingly, the Exchange believes that the proposed changes will promote consistency across the rulebooks of exchanges offering identical functionality and within its own Rulebook as well. In addition, the proposed language more accurately reflects how the Exchange currently grants allocation entitlements in these auction mechanisms to the initiating Member. The Exchange believes that this feature provides an initiating Member that submits an order into Facilitation or PIM with the flexibility to configure its allocation percentage up to the full 40% entitlement. The Exchange continues to believe that the 40% allocation entitlement is consistent with the statutory standards for competition and free and open markets by promoting price competition within Facilitation and PIM as Members would still have a reasonable opportunity to compete for a significant percentage of the incoming order.

The proposed changes to the Facilitation and PIM auto-match feature described above do not significantly affect the protection of investors or the public interest or impose a significant burden on competition. The current rule text is being amended so that it more clearly explains how the Exchange will allocate an order designated for auto-match today. As discussed above, the Exchange is not making any substantive changes

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65 See supra notes 24 and 35.

to the allocation procedure itself, rather the proposed changes are intended to better align how this feature is described in the Auto-Match Filing.[66] Similarly, the Exchange believes that the proposed change in Supplementary Material .01 to Options 3, Section 11 to add the provision that any solicited contra orders entered by Members into the Facilitation Mechanism to trade against Agency Orders may not be for the account of a Nasdaq ISE Market Maker that is assigned to the options class will better align the rule text with related filing. As discussed above, this restriction was included in the approval order to the rule filing that allowed solicited transactions in the Facilitation Mechanism, so the Exchange will import that language into the rule text for greater transparency.[67]

The proposed change in Supplementary Material .04 to Options 3, Section 13 does not significantly affect the protection of investors or the public interest or impose a significant burden on competition because it simply adds cross-cites to Options 3, Section 11(f) and (g), specifically to provide that PIMs will not queue or overlap in any manner, except as described in Options 3, Section 11(f) and (g). As discussed above, the proposal will reduce any potential confusion about how the Exchange will process concurrent PIM auctions, and will make clear that two simple or complex PIM auctions are not permitted to run concurrently, but that a simple PIM auction may run concurrently with a complex PIM auction.

The Exchange believes that the proposed change to the TVA rule is a non-substantive change to state that any amount of TVA is permitted in complex PIM (in addition to all of the other complex auction mechanisms in Options 3, Section 11). This

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66 See supra note 28.

67 See supra note 29.

is a corrective change as the cross-cite to complex PIM within the TVA rule was inadvertently dropped in a prior filing that relocated the complex auction rules.[68] As noted above, the Exchange's complex auction mechanisms provide an opportunity for market participants to respond with better-priced interest that could execute against an Agency Order. Accordingly, the Exchange believes that it is appropriate to ensure that paired orders entered into complex Facilitation, Solicitation and PIM that are broken up due to better-priced interest are actually executed against such better-priced interest, and are not restricted from trading due to TVA settings of one or more Members.

The Exchange believes its proposal to provide that AIQ will not apply during an Opening Process (i.e., the opening process or halt reopening process) does not significantly affect the protection of investors or the public interest or impose a significant burden on competition because the proposed language is copied from BX's AIQ rule, which governs identical functionality on BX.[69] Furthermore, the proposed changes will more accurately state how this functionality currently operates. AIQ prevents Market Makers from trading against their own quotes and orders. While the Exchange believes that this protection is useful for Market Makers to manage their trading during regular market hours, applying AIQ is unnecessary during an Opening Process due to the high level of control that Market Makers already exercise over their quotes during this process.

The Exchange believes that its proposal to provide that Exposure will initiate when an incoming order is priced at or through the ABBO, when the ABBO is better than

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[68] See supra note 36.

[69] See supra note 38.

the Exchange BBO, does not significantly affect the protection of investors or the public interest or impose a significant burden on competition. As discussed above, the current language in Supplementary Material .02 only specifies that Exposure is initiated when the price of the incoming order is crossed with the ABBO (i.e., would result in an impermissible Trade-Through), but does not specify the scenario in Supplementary Material .01 to Options 5, Section 3 when the price is locked. Supplementary Material .01 to Options 5, Section 3, however, also currently provides that when the price of an incoming limit order that is not executable upon entry would lock or cross a Protected Quotation, such order would be handled in accordance with the Exposure process in Supplementary Material .02 to Options 5, Section 2. As such, the proposed changes will enhance the accuracy of the rules by codifying both scenarios within the Exposure rule in Supplementary Material .02, and will continue to ensure that such order complies with the general prohibition on trade-throughs in Options 5, Section 2(a).

The Exchange further believes that the technical changes it is proposing throughout Options 3 do not significantly affect the protection of investors or the public interest or impose a significant burden on competition as they are non-substantive changes intended to enhance the accuracy of the Exchange's Rulebook, which will alleviate potential confusion as to the applicability of its rules. As discussed above, these changes consist of updating internal rule lettering and cross-cites, and using correct terminology. Lastly, the Exchange believes that the harmonizing changes to add a new Options 4B in its Rulebook and to retitle General 4, each as discussed above, will serve to further harmonize its Rule numbering and titling with that of its affiliates, thereby promoting efficiency and conformity of its processes with those of its affiliated exchanges.

Furthermore, Rule 19b-4(f)(6)(iii)[70] 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 proposed Block changes relating to the descriptions of the Block execution and allocation process in current Options 3, Section 11(a)(2)(A) and (B) are identical to BX Options 3, Section 11(a)(2)(A) and (B); the proposed Facilitation changes around broadcast message content and trade-through prohibition compliance in current Options 3, Section 11(b)(1) and (b)(3) are identical to GEMX and MRX Options 3, Section 11(b)(1) and (b)(3); the proposed Solicitation changes around broadcast message content in current Options 3, Section (d)(1) are identical to GEMX and MRX Options 3, Section 11(d)(1); the proposed AIQ changes in current Options 3, Section 15(a)(3)(A) are identical to BX Options 3, Section 15(c)(1).

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70 17 CFR 240.19b-4(f)(6)(iii).

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.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. ; File No. SR-ISE-2021-01)

February __, 2021

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Various Rules in Options 3 and Options 5

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on February 18, 2021, 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, II, and III, 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 various rules in Options 3 and Options 5.

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

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at

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

2 17 CFR 240.19b-4.

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 purpose of the proposed rule change is to amend various rules in Options 3 and Options 5. The proposed changes consist of conforming existing rules to current System technology, amending rule text to add greater detail on how certain Exchange functionality operate today, and conforming language within the Exchange's rules to the rules of other exchanges. As such, no System changes to existing functionality are being made pursuant to this proposal. Rather, this proposal is designed to reduce any potential investor confusion as to the features and applicability of certain functionality presently available on the Exchange. These changes are described in detail below, and include amending Exchange rules governing: (1) the Block Order Mechanism ("Block"),[3] (2) the Facilitation Mechanism ("Facilitation"),[4] (3) the Solicited Order Mechanism ("Solicitation"),[5] (4) the Price Improvement Mechanism ("PIM"),[6] (5) Trade Value Allowance ("TVA"),[7] (6) Anti-Internalization,[8] and (7) the exposure mechanism

[3] See Options 3, Section 11(a).

[4] See Options 3, Section 11(b).

[5] See Options 3, Section 11(d).

[6] See Options 3, Section 13.

[7] See Supplementary Material .03 to Options 3, Section 14.

[8] See Options 3, Section 15(a)(3)(A).

(“Exposure”).[9]

Universal Changes

In September 2019, the Exchange amended its regular allocation rule in Options 7, Section 10 (Priority of Quotes and Orders) to make non-substantive changes, among other changes, to replace references to Professional interest with non-Priority Customer interest.[10] The Exchange now proposes to make similar changes to replace all instances of “Professional” interest with “non-Priority Customer” interest throughout its auction allocation rules in Options 3, Section 11 and Section 13 to align with the changes made in SR-ISE-2019-21.[11] While the term “Professional Orders” is defined within Options 1, Section 1(a)(39) as an order that is for the account of a person or entity that is not a Priority Customer, the Exchange believes that using the term “non-Priority Customer” is more clear in describing the types of market participant to which the allocation applies, and also reduces confusion regarding any reference to Professional Orders or Professional Customer orders.

In addition, the Exchange proposes to make universal changes in its Facilitation and Solicitation rules[12] to clearly delineate between orders and Responses[13] of the same

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9 See Supplementary Material .02 to Options 5, Section 2.

10 See Securities Exchange Act Release No. 86947 (September 12, 2019), 84 FR 49165 (September 18, 2019) (SR-ISE-2019-21).

11 Specifically in Options 3, Section 11, the Exchange will amend current subsections (a)(2)(B), (b)(3)(A)-(C) (renumbered to (b)(4)(A)-(C) under this proposal), (c)(7)(A)-(C), (d)(2)(C) (renumbered to (d)(3)(C) under this proposal), and (e)(4)(D). In Options 3, Section 13, the Exchange will amend current subsections (d)(1)-(3) and (e)(5)(i)-(iii).

12 Specifically in Options 3, Section 11, subsections (b)(3)(A)-(C) (renumbered to (b)(4)(A)-(C)), and (d)(2)(A) and (C) (renumbered to (d)(3)(A) and (C)) will be updated.

capacity. For example, where the existing rule text currently states "Priority Customer bids (offers)," the Exchange proposes instead to state "Priority Customer Orders and Priority Customer Responses to buy (sell)." The Exchange notes that this is merely a non-substantive change as auction orders and Responses of the same capacity do not get treated differently for allocation purposes today. The rules for complex Facilitation and Solicitation already distinguish between orders and Responses, so the Exchange is simply amending those complex rules to clearly state how, for example, Priority Customer Complex Orders and Priority Customer Responses get allocated today[14] With the proposed changes, the Exchange seeks to include a similar level of detail within its simple and complex Facilitation and Solicitation rules in order to bring transparency around how allocation takes place in those auction mechanisms today.

Block Order Mechanism

The Exchange proposes minor changes to the current descriptions of the Block execution and allocation process in Options 3, Section 11(a). As discussed below, the proposed Block changes are non-substantive in nature, and are intended to harmonize with the Block rule on its affiliated market, BX Options ("BX") in order to ensure rule consistency between the Exchange and its affiliate offering identical functionality.

First, the Exchange proposes to add "up to the size of the block order" at the end of subsection (a)(2)(A). As amended, the rule will provide that bids (offers) on the Exchange at the time the block order is time the block order is executed that are priced higher (lower) than the block execution price, as well as Responses that are priced higher

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13 A "Response" is an electronic message that is sent by Members in response to a broadcast message. See Options 3, Section 11.

14 See Options 3, Section 11(c)(7) and (e)(4).

(lower) than the block execution price, will be executed in full at the block execution price up to the size of the block order. The Exchange is making this non-substantive change to align with BX's Block rule,[15] which will ensure rule consistency for identical functionality across affiliated markets. The language states that better priced interest gets executed in full only if there is sufficient size to execute against such interest, which is how block orders are executed and priced on the Exchange and BX today.

Second, the Exchange proposes a non-substantive change in the first sentence of subsection (a)(2)(B) to replace "first and in time priority" with "first in price time priority." As amended, the rule will provide that at the block execution price, Priority Customer Orders and Priority Customer Responses will be executed first in price time priority. This is not a change to the current Block allocation methodology, but rather a non-substantive change for better readability, and to align with BX's Block rule[16] in order to ensure rule consistency for identical functionality across affiliated markets. Block orders will continue to trade at a single execution price that allows the maximum number of contracts of the block order to be executed against both the Responses entered to trade against the order and unrelated interest on the Exchange's order book.

Example 1

Block order is entered to buy 50 contracts @ 1.50

The following Responses are received:

Priority Customer Response 1 to sell 40 contracts @ 1.40

Priority Customer Response 2 to sell 10 contracts @ 1.40

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15 See BX Options 3, Section 11(a)(2)(A).

16 See BX Options 3, Section 11(a)(2)(B).

Priority Customer Response 3 to sell 10 contracts @ 1.39

The block execution price would be $1.40 (i.e., the price at which the maximum number of contracts could be executed) and would be executed as follows:

Block order trades 10 with Priority Customer Response 3 @ 1.40

Block order trades 40 with Priority Customer Response 1 @ 1.40

As shown above, Priority Customer Response 3 would be executed in full since it is priced better than the block execution price and there is sufficient size to execute Response 3 against the block order, while Priority Customer Responses 1 and 2, which are priced at the block execution price, would participate in price time priority – i.e., the remaining 40 contracts would go to Response 1, which was received before Response 2.

Facilitation Mechanism

The Exchange proposes a number of changes to its Facilitation rule, none of which will change the current operation of this technology offering. Many of the proposed changes are intended to align the simple Facilitation rule in Options 3, Section 11(b) with the complex Facilitation rule in Options 3, Section 11(c) where relevant. In October 2018, the Exchange amended its complex order rules to provide greater clarity and additional detail regarding the operation and applicability of complex order functionality, including complex auction mechanisms like complex Facilitation.[17] Accordingly, the Exchange seeks to make aligning changes and update its simple auction mechanism rules to similarly provide the level of detail that now exists in its complex

17 See Securities Exchange Act Release No. 84373 (October 5, 2018), 83 FR 51730 (October 12, 2018) (SR-ISE-2018-56) ("Complex Order Filing"). As discussed later in this filing, the Complex Order Filing also clarified the Exchange's complex Solicitation and PIM rules, and the Exchange is proposing to align the simple Solicitation and PIM rules with the complex rules where possible.

auction mechanism rules. The proposed changes are also intended to align with the simple Facilitation rules of the Exchange's affiliated markets, Nasdaq GEMX ("GEMX") and Nasdaq MRX ("MRX"). The Exchange also proposes to more accurately describe how orders will be allocated in Facilitation's "auto-match" functionality.

In Options 3, Section 11(b), the Exchange proposes to add new subsection (b)(1),[18] which will provide that Orders must be entered into the Facilitation Mechanism at a price that is (A) equal to or better than the NBBO on the same side of the market as the agency order unless there is a Priority Customer order on the same side Exchange best bid or offer, in which case the order must be entered at an improved price; and (B) equal to or better than the ABBO[19] on the opposite side. Orders that do not meet these requirements are not eligible for the Facilitation Mechanism and will be rejected. The Exchange is not proposing any other changes to the current entry requirements for Facilitation. The new subsection (b)(1) would simply provide additional detail about simple Facilitation's existing entry checks, and align to the level of detail currently within the complex Facilitation rule regarding entry checks.[20]

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18 As a result, current subsections (b)(1) - (3) will be renumbered as (b)(2) - (4). The Exchange will also renumber current subsection (b)(3)(D) as subsection (b)(5).

19 The term "Away Best Bid or Offer" or "ABBO" means the displayed National Best Bid or Offer not including the Exchange's Best Bid or Offer. See Options 1, Section 1(a)(4).

20 See Options 3, Section 11(c)(1) and (c)(2). Complex Facilitation refers to the Exchange's best bid or offer instead of the NBBO or ABBO. There is no NBBO for complex orders as complex orders may be executed without consideration of any prices that might be available on other exchanges trading the same options contracts. See Options 3, Section 14(d). Additionally, executions of legs of complex orders are exceptions to the prohibition on trade-throughs. See Options 5, Section 2(b)(7).

<u>Example 2</u>

Assume the following market:

ISE BBO: 1 x 2 (also NBBO)

CBOE: 0.75. x 2.25 (next best exchange quote)

Facilitation order is entered to buy 50 contracts @ 2.05

No Responses are received.

The Facilitation order executes with resting 50 lot quote @ 2. In this instance, the Facilitation order is able to begin crossed with the contra side ISE BBO because in execution, the resting 50 lot quote @ 2 is able to provide price improvement to the facilitation order.

In renumbered subsection (b)(2), the Exchange proposes to add language to describe the content of the broadcast message sent to Members upon entry of an order into simple Facilitation. In particular, the Exchange proposes to specify that the broadcast message includes the series, price and size of the Agency Order, and whether it is to buy or sell. Although this change reflects current functionality, the existing rule is silent in this regard and only indicates that a broadcast message is sent upon the order's entry into the mechanism. Identical language currently exists in the rules governing simple Facilitation on GEMX and MRX, which operate in the same way as ISE's simple Facilitation.[21]

In renumbered subsection (b)(3), the Exchange proposes to replace the words "must not exceed" with "will only be considered up to" in order to align with identical

[21] <u>See</u> GEMX and MRX Options 3, Section 11(b)(1).

language in the complex Facilitation rule.[22] This change more accurately describes that the System will cap Responses to the size of the auction for purposes of allocation methodology.

In renumbered subsection (b)(4)(A), the Exchange proposes to provide that the facilitation order will be cancelled at the end of the exposure period if an execution would take place at a price that is inferior to the best bid (offer) on the Exchange. This is a non-substantive change that makes clear that any executions in Facilitation will comply with the general prohibition on trade-throughs in Options 5, Section 2(a). Identical language is included in the rules governing simple Facilitation on GEMX and MRX.[23]

In renumbered subsections (b)(4)(B) and (b)(4)(C), the Exchange proposes to amend the rule to provide that the facilitating Member will be allocated up to forty percent (40%) (or such lower percentage requested by the Member) of the original size of the facilitation order. If the Member requests a lower allocation percentage, the contra-side order would receive an allocation consistent with the percentage requested by the Member. Regardless of the Member's request, the contra-side order would still be responsible for executing up to the full size of the agency order if there is not enough interest to execute the agency order at a particular price. Similar language indicating that the Member may request a lower allocation percentage than 40% is currently included in the complex Facilitation rule, which operate in the same way as the simple Facilitation in this manner.[24] For greater consistency between its simple and complex Facilitation rules,

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22 See Options 3, Section 11(c)(6).

23 See GEMX and MRX Options 3, Section 11(b)(3).

24 See Options 3, Section 11(c)(7)(B) and (C). Other options exchanges such as BX provide similar functionality that allows members using an auction mechanism to

the Exchange also proposes to make aligning, non-substantive changes in the complex Facilitation rule to provide that the Member will "be allocated up to" forty percent. The current complex Facilitation language provides that the Member will "execute at least forty percent" or that the Member will "be allocated at least forty percent."[25] The non-substantive language proposed for complex Facilitation will therefore serve to harmonize the complex rule with the amended simple rule.

The Exchange also proposes to more accurately describe Facilitation's auto-match functionality, which provides an enhanced price improvement opportunity for the agency order by permitting the contra-side order to further participate in the cross by auto-matching the price and size of competing interest providing price improvement from other market participants.[26] The rule currently provides that upon entry of an order into the Facilitation Mechanism, the facilitating Electronic Access Member can elect to automatically match the price and size of orders, quotes and responses received during the exposure period up to a specified limit price or without specifying a limit price. In this case, the facilitating Electronic Access Member will be allocated its full size at each price point, or at each price point within its limit price is a limit is specified, until a price

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configure allocation priority. See, e.g., BX Options 3, Section 13, which provides a similar feature for the BX Options Price Improvement Auction ("PRISM") called "Surrender."

25 Id.

26 See Securities Exchange Act Release No. 62644 (August 4, 2010), 75 FR 48395 (August 10, 2010) (SR-ISE-2010-61) ("Auto-Match Filing"). As discussed later in this filing, the Auto-Match Filing also introduced the auto-match feature on PIM. As such, the Exchange is proposing to make similar changes in PIM's auto-match rule as proposed for Facilitation's auto-match rule.

point is reached where the balance of the order can be fully executed.[27] The Exchange proposes to state that if a Member elects to auto-match, the facilitating Electronic Access Member will be allocated the aggregate size of all competing quotes, orders, and Responses (instead of "its full size") at each price point, or at each price point up to the specified limit price (instead of "within its limit price") if a limit is specified, until a price point is reached where the balance of the order can be fully executed. The Exchange believes that the modified language more accurately explains how the functionality works today, and better aligns with how this feature is described in the Auto-Match Filing.[28] For greater consistency within its Rulebook, the Exchange will also make the same changes in the complex Facilitation auto-match rule in Options 3, Section 11(c)(7)(C).

Lastly, the Exchange proposes to add at the end of Supplementary Material .01 to Options 3, Section 11 that any solicited contra orders entered by Members into the Facilitation Mechanism to trade against Agency Orders may not be for the account of a Nasdaq ISE Market Maker that is assigned to the options class.[29] This language was included in the approval order to SR-ISE-2006-78 to allow solicited transactions in ISE's Facilitation Mechanism, so the proposed change will import that prohibition into the rule text for greater transparency.

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27 See Options 3, Section 11(b)(3)(C) (renumbered to Section 11(b)(4)(C) under this proposal).

28 The Auto-Match Filing describes the auto-match feature as allowing the initiating member to submit a contra-side order that will automatically match the price and size set forth by the competing interest from other market participants (i.e., auction responses, quotes, and orders) at any price level during the auction or up to a specified limit price if a limit is specified.

29 See Securities Exchange Act Release No. 55557 (March 29, 2007), 72 FR 16838 (April 5, 2007) (SR-ISE-2006-78) (Order Granting Approval of Proposed Rule Change Relating to Facilitation Mechanism).

Solicited Order Mechanism

The Exchange proposes a number of changes to its Solicitation rule, none of which will change the current operation of this technology offering.

In Options 3, Section 11(d), the Exchange proposes to add new subsection (d)(1),[30] which will provide that orders must be must be entered into the Solicited Order Mechanism at a price that is equal to or better than the NBBO on both sides of the market; provided that, if there is a Priority Customer order on the Exchange best bid or offer, the order must be entered at an improved price. Orders that do not meet these requirements are not eligible for the Solicited Order Mechanism and will be rejected. The Exchange is not proposing any other changes to the current entry requirements for Solicitation. The new subsection (d)(1) would simply provide additional detail about simple Solicitation's existing entry checks, and align to the level of detail currently within the complex Solicitation rule regarding entry checks.[31]

Example 3

Assume the following market:

ISE BBO: 1 x 2 (also NBBO)

CBOE: 0.75. x 2.25 (next best exchange quote)

Solicitation order is entered to buy 500 contracts @ 2.05

The Solicitation order is rejected upon entry for being crossed with the NBBO on the

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30 As a result, current paragraphs (d)(1) - (3) will be renumbered accordingly. The Exchange will also renumber current paragraph (d)(2)(D) as paragraph (d)(4).

31 See Options 3, Section 11(e)(1). Complex Solicitation refers to the Exchange's best bid or offer instead of the NBBO. As noted above, there is no NBBO for complex orders, and executions of legs of complex orders are exceptions to the prohibition of trade-throughs. See supra note 20.

contra side. In contrast to Example 2 above for Facilitation, the Solicitation order in this instance is not able to begin crossed with the contra side ISE BBO because of the all-or-none contingency of the Solicitation order.[32]

In renumbered subsection (d)(2), the Exchange proposes to add language to describe the content of the broadcast message sent to Members upon entry of an order into simple Solicitation. In particular, the Exchange proposes to specify that the broadcast message includes the series, price and size of the Agency Order, and whether it is to buy or sell. While this change reflects current functionality, the existing rule is silent in this regard and only indicates that a broadcast message is sent upon the order's entry into the mechanism. Identical language already exists in the rules governing simple Solicitation on GEMX and MRX, which operate in the same way as the ISE's simple Solicitation.[33]

Lastly, the Exchange also proposes technical changes in renumbered subsection (d)(3) to correct the internal lettering and cross-cites within paragraphs (A) through (C).

Price Improvement Mechanism

The Exchange proposes a number of changes to the PIM rule, none of which will change the current operation of this technology offering. As noted above, many of these modifications are similar to the changes proposed for Facilitation.

The Exchange proposes in Options 3, Section 13(b)(2) to delete "national best bid or offer" as NBBO is already defined in subsection (b)(1) above. The Exchange proposes in subsection (c)(2) to provide that responses in the PIM (i.e., "Improvement Orders")

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32 See Options 3, Section 11(d) (requiring that each Solicitation order be designated as all-or-none).

33 See GEMX and MRX Options 3, Section 11(d)(1).

will only be considered up to the size of the Agency Order. The proposed amendment will specifythat the System will cap the size of the Improvement Orders to the auction size for purposes of the allocation methodology. This is similar to the change proposed above for simple Facilitation, and also aligns to identical language in the complex PIM rule.[34] The Exchange also proposes in subsection (c)(3) to amend the internal numbering from (1) and (2) to (i) and (ii) for greater numbering consistency within the PIM rule.

In subsection (d)(3), which describes how allocation and execution takes place in simple PIM, the Exchange proposes that the Counter-Side Order will be allocated the greater of one contract or 40% (or such lower percentage requested by the Member) of the initial size of the Agency Order. Similar to Facilitation as discussed above, the System currently permits Members entering orders into PIM to elect to receive a percentage allocation that is less than 40%, although the current rule is silent in this regard. If the Member requests a lower allocation percentage, the Counter-Side Order would receive an allocation consistent with the percentage requested by the Member. Regardless of the Member's request, the Counter-Side Order would still be responsible for executing up to the full size of the agency order if there is not enough interest to execute the agency order at a particular price. Complex PIM, which shares the same allocation feature as simple PIM, already has this concept within the rule, so the proposed changes will align the simple PIM rule with the complex PIM rule.[35]

The Exchange also proposes to more accurately describe PIM's auto-match functionality in a similar manner as Facilitation's auto-match functionality, as discussed

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34 See Options 3, Section 13(e)(4)(i).

35 See Options 3, Section 13(e)(5)(iii). As noted above, BX has a similar feature called Surrender for its PRISM auction. See supra note 24.

above. In this instance, the Exchange proposes to amend the third sentence of subsection (d)(3) to provide: "If a Member elects to auto-match, the Counter-Side Order will be allocated the aggregate size of all competing quotes, orders, and Responses at each price point up to the specified limit price if a limit is specified, until a price point is reached where the balance of the order can be fully executed." Similar to the proposed amendments to simple Facilitation's auto-match, the Exchange believes that the proposed language for simple PIM's auto-match more clearly explains how the functionality works today, and better aligns with how this feature is described in the Auto-Match Filing. For greater consistency within its Rulebook, the Exchange will also make the same changes in the complex PIM auto-match rule in Options 3, Section 13(e)(5)(iii).

The Exchange further proposes technical amendments in subsection (d)(3) to replace all instances of "Counter-Side order" as "Counter-Side Order" to use the correct terminology. Lastly, the Exchange proposes to provide in Supplementary Material .04 to Options 3, Section 13 that PIMs will not queue or overlap in any manner, <u>except as described in Options 3, Section 11(f) and (g)</u>. Sections 11(f) and (g) set forth the governing provisions for concurrent complex auctions and concurrent complex and simple auctions. The proposed changes to add in the cross-cites to Sections 11(f) and (g) will make clear that two simple or two complex PIM auctions are not permitted to run concurrently, but that a simple PIM auction may run concurrently with a complex PIM auction.

<u>Trade Value Allowance</u>

The Exchange proposes a non-substantive change to amend the TVA rule in Supplementary Material .03 to Options 3, Section 14 to add a cross-cite to the complex

PIM rule in Options 3, Section 13, which was inadvertently omitted when the Exchange relocated the complex auctions rules in a prior filing.[36] In SR-ISE-2019-05, the original cross-cite within the TVA rule was updated from Supplementary Material .08 to Rule 722 to Rule 716 (now Options 3, Section 11). Supplementary Material .08 to Rule 722 set forth the complex auction mechanism rules, namely complex Facilitation, Solicitation, and PIM. SR-ISE-2019-05 relocated complex Facilitation and Solicitation to Rule 716 (now Options 3, Section 11), but moved complex PIM to Rule 723 (now Options 3, Section 13). As such, the original cross-cite in the TVA rule should have been updated to include complex PIM in Rule 723 but was inadvertently omitted.

TVA is a functionality that allows complex orders to trade outside of their expected notional trade amount by a specified amount. The amount of TVA permitted may be determined by the Member, or a default value determined by the Exchange and announced to Members.[37] The TVA rule currently provides, however, that any amount of TVA is permitted in auction mechanisms pursuant to Options 3, Section 11 when auction orders do not trade solely with their contra-side order. The Exchange now proposes to add a cross-cite to Options 3, Section 13 to specify that TVA also applies to complex PIM auctions in this manner. The Exchange will also provide that TVA applies to "complex" mechanisms in the cited rules. These changes will align the rule text to how TVA is presently implemented in the System. The Exchange notes that its complex auction mechanisms provide an opportunity for market participants to respond with better-priced interest that could execute against an Agency Order. As such, the Exchange

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36 See Securities Exchange Release No. 85308 (March 13, 2019), 84 FR 10136 (March 19, 2019) (SR-ISE-2019-05).

37 See Supplementary Material .03 to Options 3, Section 14.

believes that it is appropriate to ensure that paired orders entered into complex Facilitation, Solicitation and PIM that are broken up due to better-priced interest are actually executed against such better-priced interest, and are not restricted from trading due to TVA settings of one or more Members.

Anti-Internalization

The Exchange proposes to amend its anti-internalization ("AIQ") rule in Options 3, Section 15(a)(3)(A). Specifically, the Exchange proposes to add that AIQ does not apply during the opening process or reopening process following a trading halt pursuant to Options 3, Section 8 to provide more specificity on how this functionality currently operates. The Exchange notes that the same procedures used during the opening process are used to reopen an option series after a trading halt, and therefore proposes to specify that AIQ will not apply during an Opening Process (i.e., the opening and halt reopening process) in addition to an auction, as currently within the Rule. AIQ is unnecessary during an Opening Process due to the high level of control that Market Makers exercise over their quotes during this process. The proposed changes will align the Exchange's AIQ rule with BX's AIQ rule, which sets forth materially identical functionality.[38]

Exposure Mechanism

Under the linkage rules, the Exchange cannot execute orders at a price that is inferior to the NBBO, nor can the Exchange place an order on its book that would cause the Exchange best bid or offer to lock or cross another exchange's quote.[39] In these circumstances, Supplementary Material .02 to Options 5, Section 2 sets forth an Exposure

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38 See BX Options 3, Section 15(c)(1).

39 See Options 5, Sections 2 and 3. See also Options 3, Section 5(d)

mechanism for automated order handling where eligible incoming orders are exposed at the NBBO to all Members to give them an opportunity to execute the order at the NBBO price or better. The Exchange proposes to make clear within Supplementary Material .02 that an incoming order will be eligible for Exposure if the order is priced at or through the ABBO, when the ABBO is better than the Exchange BBO.

Supplementary Material .02 to Options 5, Section 2 currently provides that when the automatic execution of an incoming order would result in an impermissible Trade-Through, such order would be exposed at the current NBBO to all Exchange Members for a time period established by the Exchange not to exceed one (1) second. Supplementary Material .01 to Options 5, Section 3, however, currently provides that when the price of an incoming limit order that is not executable upon entry would lock or cross a Protected Quotation, such order would be handled in accordance with the Exposure process in Supplementary Material .02 to Options 5, Section 2.[40] The Exchange proposes to modify Supplementary Material .02 by removing the portion related to the automatic execution of an incoming order that would result in an impermissible Trade-Through, and instead providing within this Rule that Exposure will initiate when an incoming order is priced **at or** through the ABBO, when the ABBO is better than the Exchange BBO. The current language in Supplementary Material .02 only specifies that Exposure is initiated when the price of the incoming order is crossed with the ABBO (i.e., would result in an impermissible Trade-Through), but does not specify the scenario in Supplementary Material .01 to Options 5, Section 3 when the price is

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40 Such order would also be handled in accordance with Supplementary Material .04 (Non-Customer Orders that opt out of the Exposure mechanism) or .05 (Sweep Orders) to Options 5, Section 2, as applicable. See Supplementary Material .01 to Options 5, Section 3.

locked. As such, the proposed changes seek to enhance the accuracy of the rules by codifying both scenarios within the Exposure rule in Supplementary Material .02.

Technical Amendments

The Exchange proposes technical changes in the Supplementary Material to Options 3, Section 11. First, the Exchange proposes in Supplementary Material .03 to update an incorrect cross-cite from Options 3, Section 22(d) to Section 22(b), which limits principal transactions. Second, the Exchange will make corrective changes to renumber Supplementary Material .07 to .05, and to update the cross-cite to paragraph (a)(2)(i) therein to paragraph (a)(2)(A). Third, the Exchange proposes in renumbered Supplementary Material .07 to update the reference to "Block Mechanism" to "Block Order Mechanism" to use the correct terminology.

Lastly, the Exchange proposes some harmonizing changes throughout its Rulebook to align with the rule numbering and titles with that of its affiliates. Specifically, the Exchange proposes to add a new Options 4B and reserve it in the Rulebook in order to harmonize its Options Rule numbering with that of its affiliates, GEMX and Nasdaq PHLX LLC ("Phlx"). The Exchange also proposes to retitle General 4 (currently titled "Regulation") to "Registration Requirements" to harmonize its General Rule titles with that of its affiliates The Nasdaq Stock Market LLC and Nasdaq BX, Inc.

2. Statistory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[41] in general, and furthers the objectives of Section 6(b)(5) of the Act,[42] in particular,

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41 15 U.S.C. 78f(b).

42 15 U.S.C. 78f(b)(5).

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 Exchange believes that its proposal is consistent with the protection of investors and public interest as all of the proposed changes will increase transparency around how various existing Exchange mechanisms work today. As such, no System changes to existing functionality are being made pursuant to this proposal. Rather, this proposal is designed to reduce any potential investor confusion as to the features and applicability of certain functionality presently available on the Exchange.

Furthermore, many of the proposed changes seek to provide greater harmonization between the rules of the Exchange and its affiliates (notably rules related to Block, Facilitation, Solicitation, and AIQ), or between the Exchange's own simple and complex auction rules (notably for simple and complex Facilitation, Solicitation, and PIM).[43] The Exchange believes that these harmonizing changes would result in greater uniformity, and ultimately less burdensome and more efficient regulatory compliance by market participants. As such, the proposed rule change would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange also believes that more consistent rules will increase the understanding of the Exchange's operations for Members that are also

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43 As noted above, the Exchange seeks to add granularity to its simple auction rules to align with the level of detail that currently exists within its complex auction rules. See supra note 17.

members on the Exchange's affiliates, thereby contributing to the protection of investors and the public interest.

Specifically, the Exchange believes that the proposed universal changes to replace all instances of Professional interest with non-Priority Customer interest throughout the Exchange's auction allocation rules will add greater consistency within the Exchange's rules. As discussed above, the Exchange previously made the same modifications within its standard allocation rule in Options 7, Section 10, so the proposed changes will promote more consistent terminology in the rules and make them easier for market participants to navigate and comprehend. The Exchange also believes that using the term "non-Priority Customer" reduces any potential confusion regarding any reference to Professional Orders or Professional Customer orders. In addition, the Exchange believes that clearly delineating between orders and Reponses of the same capacity in the Facilitation and Solicitation rules will bring clarity and transparency around how allocation takes place in those auction mechanisms. The complex Facilitation and Solicitation rules currently differentiate between orders and Responses,[44] so the Exchange is aligning the simple rule to the level of granularity already found in the complex rule while also specifying the capacity of such order or Response within the simple and complex rules. As noted above, the Exchange is not changing the current allocation methodology, and auction orders and Responses of the same capacity do not get treated differently for allocation purposes today.

The Exchange believes that the proposed changes to the Block rule are consistent with the protection of investors and the public interest as the modifications will more

44 See supra note 14.

accurately reflect the handling of auctions in Block, specifically as it relates to execution and allocation. The proposed changes will specify that better priced interest entered into Block gets executed in full only if there is sufficient size to execute against such interest, and that Priority Customer interest gets executed first in price time priority. This specificity will be helpful to market participants utilizing Block and provide greater certainty as to how their Block orders will be executed and allocated. The Exchange also believes that the proposed changes will continue to ensure a fair and orderly market by maintaining and protecting the priority of Priority Customer orders, while still affording the opportunity for all market participants to seek liquidity and potential price improvement during each Block auction commenced on the Exchange. As noted above, the Exchange is not proposing any changes to the current execution or allocation methodology but believes that the changes will promote consistency with the rulebook of its affiliated exchange BX, which offers identical functionality.[45]

Similarly, the Exchange believes that specifying the entry checks for simple Facilitation and Solicitation is consistent with the protection of investors and the public interest by providing greater consistency to the level of granularity currently within the complex Facilitation and Solicitation entry checks.[46] The Exchange also believes it is appropriate to require that the Facilitation order be entered at an improved price if there is a Priority Customer order on the same side Exchange best bid or offer as the agency order. The Exchange believes this will ensure a fair and orderly market by maintaining priority of orders and quotes and protecting Priority Customer orders, while still

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45 See supra notes 15-16, and accompanying text.

46 See supra notes 20 and 31, and accompanying text.

affording the opportunity to seek liquidity and for potential price improvement during each Facilitation auction commenced on the Exchange. For the same reasons, the Exchange believes that it is appropriate to require that the Solicitation order be entered at an improved price if there is a Priority Customer order on the Exchange best bid or offer.

The Exchange further believes that it is consistent with the Act to specify the contents of the broadcast message sent to Members upon entry of an order into simple Facilitation and Solicitation as the changes will remove any potential confusion about what type of auction information is disseminated. Currently, the broadcast message in simple Facilitation and Solicitation includes the series, price, and size of the Agency Order, and whether it is to buy or sell. As this information is helpful to auction participants, the Exchange believes that codifying this information into the simple Facilitation and Solicitation rules may encourage greater participation within these mechanisms, thereby increasing the opportunity for options orders to receive executions on the Exchange. The Exchange is not proposing any changes to the current content of the broadcast message but wants to make this clear in its rules, which, with this change, would be consistent with the rules of its affiliated exchanges that offer identical functionality.[47] Likewise, the proposed change to add that a facilitation order would be cancelled at the end of the exposure period if an execution would take place at a price that is inferior to the best bid (offer) on the Exchange is intended to ensure compliance with the general prohibition on trade-throughs in Options 5, Section 2(a), and to ensure

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47 See supra notes 21 and 33.

consistency across the rules of the Exchange and its affiliates that offer identical functionality.[48]

The proposed changes to replace "must not exceed" with "will only be considered up to" in the simple Facilitation and PIM rules are intended to more accurately describe that the System will cap the size of Responses to the size of the agency order for purposes of allocation. The Exchange is not amending current System behavior; rather, the modifications will more clearly articulate the handling of Responses by the System. In addition, the proposed changes will serve to harmonize the simple and complex auction rules, thereby resulting in greater uniformity and ultimately less burdensome and more efficient regulatory compliance by market participants.[49]

The Exchange believes that its proposal to specify in the simple Facilitation and PIM rules that an initiating Member may elect to receive a percentage allocation lower than 40% is consistent with the Act. This feature provides an initiating Member that submits an order into Facilitation or PIM with the flexibility to configure its allocation percentage up to the full 40% entitlement. The Exchange notes that regardless of the Member's instruction, the contra-side order would still be responsible for executing up to the full size of the agency order if there is not enough interest to execute the agency order at a particular price. The Exchange continues to believe that the 40% allocation entitlement is consistent with the statutory standards for competition and free and open markets by promoting price competition within Facilitation and PIM as Members would still have a reasonable opportunity to compete for a significant percentage of the

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48 See supra note 23.

49 See supra notes 22 and 34.

incoming order. The Exchange also notes that the configurable 40% allocation entitlement for simple Facilitation and PIM is consistent with the configurable allocation entitlements in place on complex Facilitation and PIM as well as on its affiliated exchange, BX.[50] Accordingly, the Exchange believes that the proposed changes will promote consistency across the rulebooks of exchanges offering identical functionality and within its own Rulebook as well.

With respect to the proposed changes to the Facilitation and PIM auto-match feature, the Exchange is amending the current rule text so that it more accurately explains how the Exchange will allocate an order designated for auto-match today. As discussed above, the Exchange is not making any substantive changes to the allocation procedure itself; rather the proposed changes are intended to better align how this feature is described in the Auto-Match Filing.[51] Similarly, the Exchange believes that the proposed change in Supplementary Material .01 to Options 3, Section 11 to add the provision that any solicited contra orders entered by Members into the Facilitation Mechanism to trade against Agency Orders may not be for the account of a Nasdaq ISE Market Maker that is assigned to the options class will better align the rule text with related filing. As discussed above, this restriction was included in the approval order to the rule filing that allowed solicited transactions in the Facilitation Mechanism, so the Exchange will import that language into the rule text for greater transparency.[52]

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50 See supra notes 24 and 35.

51 See supra note 28.

52 See supra note 29.

The proposed change in Supplementary Material .04 to Options 3, Section 13 to provide that PIMs will not queue or overlap in any manner, except as described in Options 3, Section 11(f) and (g) will make clear that two simple or complex PIM auctions are not permitted to run concurrently, but that a simple PIM auction may run concurrently with a complex PIM auction. The Exchange believes that this change will reduce any potential confusion around how simultaneous PIM auctions are processed by the System.

The Exchange believes that the proposed change to the TVA rule is a non-substantive change to say that any amount of TVA is permitted in complex PIM (in addition to all of the other complex auction mechanisms in Options 3, Section 11). This is a corrective change as the cross-cite to complex PIM within the TVA rule was inadvertently dropped in a prior filing that relocated the complex auction rules.[53] As noted above, the Exchange's complex auction mechanisms provide an opportunity for market participants to respond with better-priced interest that could execute against an Agency Order. Accordingly, the Exchange believes that it is appropriate to ensure that paired orders entered into complex Facilitation, Solicitation and PIM that are broken up due to better-priced interest are actually executed against such better-priced interest, and are not restricted from trading due to TVA settings of one or more Members.

The Exchange believes its proposal to provide that AIQ will not apply during an Opening Process (i.e., the opening process or halt reopening process) will more accurately state how this functionality currently operates. AIQ prevents Market Makers from trading against their own quotes and orders. While the Exchange believes that this protection is useful for Market Makers to manage their trading during regular market

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53 See supra note 36.

hours, applying AIQ is unnecessary during an Opening Process due to the high level of control that Market Makers already exercise over their quotes during this process. Furthermore, the proposed AIQ changes will promote consistency with the rulebook of its affiliated exchange BX, which offers identical functionality.[54]

The Exchange believes that its proposal to provide that Exposure will initiate when an incoming order is priced at or through the ABBO, when the ABBO is better than the Exchange BBO, is consistent with the Act. As discussed above, the current language in Supplementary Material .02 only specifies that Exposure is initiated when the price of the incoming order is crossed with the ABBO (i.e., would result in an impermissible Trade-Through), but does not specify the scenario in Supplementary Material .01 to Options 5, Section 3 when the price is locked. Supplementary Material .01 to Options 5, Section 3, however, also currently provides that when the price of an incoming limit order that is not executable upon entry would lock or cross a Protected Quotation, such order would be handled in accordance with the Exposure process in Supplementary Material .02 to Options 5, Section 2. As such, the proposed changes will enhance the accuracy of the rules by codifying both scenarios within the Exposure rule in Supplementary Material .02, and will continue to ensure that such order complies with the general prohibition on trade-throughs in Options 5, Section 2(a).

The Exchange further believes that the technical changes it is proposing throughout Options 3 are non-substantive changes intended to enhance the accuracy of the Exchange's Rulebook, which will alleviate potential confusion as to the applicability of its rules. As discussed above, these changes consist of updating internal rule lettering

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54 See supra note 38.

and cross-cites, and using correct terminology. Lastly, the Exchange believes that the harmonizing changes to add a new Options 4B in its Rulebook and to retitle General 4, each as discussed above, will serve to further harmonize its Rule numbering and titling with that of its affiliates, thereby promoting efficiency and conformity of its processes with those of its affiliated exchanges.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. As indicated above, no System changes to existing functionality are being made pursuant to this proposal; rather, this proposal is designed to reduce any potential investor confusion as to the features and applicability of certain functionality presently available on the Exchange. Therefore, the proposed changes are designed to enhance clarity and consistency in the Exchange's Rulebook.

Furthermore, many of the proposed changes seek to provide greater harmonization between the rules of the Exchange and its affiliates, and therefore promotes fair competition among the options exchanges. In particular, the proposed changes discussed above for Block and AIQ are based on BX rules governing identical functionality,[55] and the Facilitation and Solicitation changes around broadcast message content and trade-through prohibition compliance (Facilitation only) are based on GEMX and MRX rules governing identical functionality.[56] The Exchange notes that it operates

55 See BX Options 3, Section 11(a) (Block) and Section 15(c)(1) (AIQ).

56 See GEMX and MRX Options 3, Section 11(b)(1) (Facilitation broadcast message), Options 3, Section 11(d)(1) (Solicitation broadcast message), and Options 3, Section 11(b)(3) (Facilitation executions trade-through compliance).

in a highly competitive market in which market participants can readily direct order flow to competing venues who offer similar functionality. The Exchange believes that the proposed rule change will enhance competition among the various markets for auction execution, potentially resulting in more active trading in auction mechanisms across all options exchanges.

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

No written comments were either solicited or received.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[57] and subparagraph (f)(6) of Rule 19b-4 thereunder.[58]

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

57 15 U.S.C. 78s(b)(3)(A)(iii).

58 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.

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
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-ISE-2021-01 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-2021-01. 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 Web site (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-2021-01 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.[59]

J. Matthew DeLesDernier
Assistant Secretary

59 17 CFR 200.30-3(a)(12).

EXHIBIT 5

New text is underlined; deleted text is in brackets.

Nasdaq ISE, LLC Rules

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General 4 [Regulation]<u>Registration Requirements</u>

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Options 3 Options Trading Rules

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Section 11. Auction Mechanisms

For purposes of this Rule, a "broadcast message" means an electronic message that is sent by the Exchange to all Members, and a "Response" means an electronic message that is sent by Members in response to a broadcast message. Also for purposes of this Rule, the time given to Members to enter Responses for any of the below auction mechanisms shall be designated by the Exchange via an Options Trader Alert, but no less than 100 milliseconds and no more than 1 second.

(a) **Block Order Mechanism**. The Block Order Mechanism is a process by which a Member can obtain liquidity for the execution of block-size orders. The Block Order Mechanism is for single leg transactions only. Block-size orders are orders for fifty (50) contracts or more.

(1) – (2) No change.

(A) Responses, orders, and quotes will be executed at a single block execution price that is the price for the block-size order at which the maximum number of contracts can be executed consistent with the Member's instruction. Bids (offers) on the Exchange at the time the block order is executed that are priced higher (lower) than the block execution price, as well as Responses that are priced higher (lower) than the block execution price, will be executed in full at the block execution price<u> up to the size of the block order</u>.

(B) At the block execution price, Priority Customer Orders and Priority Customer Responses will be executed first [and] in <u>price </u>time priority, and then quotes, [Professional]<u>non-Priority Customer</u> Orders, and [Professional]<u>non-Priority Customer</u> Responses will participate in the execution of the block-size order based upon the percentage of the total number of contracts available at the block execution price that is represented by the size of the quote, [Professional]<u>non-Priority Customer</u> Order, or [Professional]<u>non-Priority Customer</u> Response.

(3) No change.

(b) **Facilitation Mechanism**. The Facilitation Mechanism is a process by which an Electronic Access Member can execute a transaction wherein the Electronic Access Member seeks to facilitate a block-size order it represents as agent, and/or a transaction wherein the Electronic Access Member solicited interest to execute against a block-size order it represents as agent. Electronic Access Members must be willing to execute the entire size of orders entered into the Facilitation Mechanism.

(1) Orders must be entered into the Facilitation Mechanism at a price that is (A) equal to or better than the NBBO on the same side of the market as the agency order unless there is a Priority Customer order on the same side Exchange best bid or offer, in which case the order must be entered at an improved price; and (B) equal to or better than the ABBO on the opposite side. Orders that do not meet these requirements are not eligible for the Facilitation Mechanism and will be rejected.

(2)[(1)] Upon the entry of an order into the Facilitation Mechanism, a broadcast message that includes the series, price and size of the Agency Order, and whether it is to buy or sell, will be sent and Members will be given an opportunity to enter Responses with the prices and sizes at which they want to participate in the facilitation of the order.

(3)[(2)] Responses may be priced at the price of the order to be facilitated or at a better price and [must not exceed]will only be considered up to the size of the order to be facilitated.

(4)[(3)] At the end of the period given for the entry of Responses, the facilitation order will be automatically executed.

(A) Unless there is sufficient size to execute the entire facilitation order at a better price, Priority Customer Orders and Priority Customer Responses to buy (sell)[bids (offers)] at the time the facilitation order is executed that are priced higher (lower) than the facilitation price will be executed at the facilitation price. [Professional]Non-Priority Customer Orders and non-Priority Customer Responses to buy (sell) and Market Maker quotes at the time the facilitation order is executed that are priced higher (lower) than the facilitation price will be executed at their stated price, thereby providing the order being facilitated a better price for the number of contracts associated with such higher bids (lower offers). The facilitation order will be cancelled at the end of the exposure period if an execution would take place at a price that is inferior to the best bid (offer) on Nasdaq ISE.

(B) The facilitating Electronic Access Member will [execute at least]be allocated up to forty percent (40%) (or such lower percentage requested by the Member) of the original size of the facilitation order, but only after better-priced Responses, orders and quotes, as well as Priority Customer Orders and Priority Customer Responses at the facilitation price, are executed in full at such price point. Thereafter, [Responses,] quotes, [and Professional]non-Priority Customer Orders, and non-Priority Customer Responses at the facilitation price will participate in the execution of the facilitation order based upon the percentage of the total number of contracts available at the facilitation price that is represented by the size of the [Response, Professional Order or] quote, non-Priority Customer Order, or non-Priority Customer Response.

(C) Upon entry of an order into the Facilitation Mechanism, the facilitating Electronic Access Member can elect to automatically match the price and size of orders, quotes and responses received during the exposure period up to a specified limit price or without specifying a limit price. [In this case]If a Member elects to auto-match, the facilitating Electronic Access Member will be allocated [its full size]the aggregate size of all competing quotes, orders, and Responses at each price point, or at each price point [within its limit price]up to the specified limit price i[s]f a limit is specified, until a price point is reached where the balance of the order can be fully executed. At such price point, the facilitating Member shall be allocated [at least] up to forty percent (40%) (or such lower percentage requested by the Member) of the original size of the facilitation order, but only after Priority Customer Orders and Priority Customer Responses [interest] at such price point. Thereafter, all [other orders]non-Priority Customer Orders, non-Priority Customer Responses, and quotes at the price point will participate in the execution of the facilitation order based upon the percentage of the total number of contracts available at the facilitation price that is represented by the size of the [order]non-Priority Customer Order, non-Priority Customer Response or quote. An election to automatically match better prices cannot be cancelled or altered during the exposure period.

(5)[(D)] If a trading halt is initiated after an order is entered into the Facilitation Mechanism, such auction will be automatically terminated without execution.

(c) **Complex Facilitation Mechanism**. Electronic Access Members may use the Facilitation Mechanism in sub-paragraph (b) above to execute block-size Complex Orders at a net price. Each options leg of a Complex Order entered into the Complex Facilitation Mechanism must meet the minimum contract size requirement. The Complex Facilitation Mechanism is a process by which an Electronic Access Member can execute a transaction wherein the Electronic Access Member seeks to facilitate a block-size Complex Order it represents as agent, and/or a transaction wherein the Electronic Access Member solicited interest to execute against a block-size Complex Order it represents as agent. Electronic Access Members must be willing to execute the entire size of Complex Orders entered into the Complex Facilitation Mechanism.

(1) – (7) No change.

(A) Unless there is sufficient size to execute the entire facilitation order at a better net price, Priority Customer Complex Orders and Priority Customer Responses to buy (sell) at the time the facilitation order is executed that are priced higher (lower) than the facilitation price will be executed at the facilitation price.

[Professional]Non-Priority Customer Complex Orders and non-Priority Customer Responses to buy (sell) at the time the facilitation order is executed that are priced higher (lower) than the facilitation price will be executed at their stated price, thereby providing the Complex Order being facilitated a better price for the number of contracts associated with such higher bids (lower offers).

(B) The facilitating Electronic Access Member will [execute at least]be allocated up to forty percent (40%) (or such lower percentage requested by the Member) of the original size of the facilitation order, but only after better-priced Responses, Complex Orders, as well as Priority Customer Complex Orders and Priority Customer Responses at the facilitation price, are executed in full. Thereafter, [Professional]non-Priority Customer Complex Orders and non-Priority Customer Responses at the facilitation price will participate in the execution of the facilitation order based upon the percentage of the total number of contracts available at the facilitation price that is represented by the size of the [Professional]non-Priority Customer Complex Order or non-Priority Customer Response.

(C) Upon entry of a Complex Order into the Complex Facilitation Mechanism, the facilitating Electronic Access Member can elect to automatically match the net price and size of Complex Orders, Responses received during the exposure period up to a specified limit price or without specifying a limit price. This election will also automatically match the net price available from the ISE best bids and offers on the individual legs for the full size of the order; provided that with notice to Members the Exchange may determine whether to offer this option only for Complex Options Orders, Stock-Option Orders, and/or Stock Complex Orders. If a Member elects to auto-match, the facilitating Electronic Access Member will be allocated [its full size]the aggregate size of all competing Complex Orders and Responses at each price point, or at each price point [within its limit price]up to the specified limit price if a limit is specified, until a price point is reached where the balance of the order can be fully executed. At such price point, the facilitating Member will be allocated [at least]up to forty percent (40%) (or such lower percentage requested by the Member) of the original size of the facilitation order, but only after Priority Customer Orders and Priority Customer Responses at such price point. Thereafter, [Professional]non-Priority Customer Complex Orders and non-Priority Customer Responses at the price point will participate in the execution of the facilitation order based upon the percentage of the total number of contracts available at the facilitation price that is represented by the size of the [Professional]non-Priority Customer Complex Order or non-Priority Customer Response. An election to automatically match better prices cannot be cancelled or altered during the exposure period.

(D) No change.

(d) **Solicited Order Mechanism**. The Solicited Order Mechanism is a process by which an Electronic Access Member can attempt to execute orders of 500 or more contracts it represents as agent (the "Agency Order") against contra orders that it solicited. Each order entered into the Solicited Order Mechanism shall be designated as all-or-none.

(1) Orders must be entered into the Solicited Order Mechanism at a price that is equal to or better than the NBBO on both sides of the market; provided that, if there is a Priority Customer order on the Exchange best bid or offer, the order must be entered at an improved price. Orders that do not meet these requirements are not eligible for the Solicited Order Mechanism and will be rejected.

(2)[(1)] Upon entry of both orders into the Solicited Order Mechanism at a proposed execution price, a broadcast message that includes the series, price and size of the Agency Order, and whether it is to buy or sell, will be sent and Members will be given an opportunity to enter Responses with the prices and sizes at which they would be willing to participate in the execution of the Agency Order.

(3)[(2)] At the end of the period given Members to enter Responses, the Agency Order will be automatically executed in full or cancelled.

(A) If at the time of execution there is insufficient size to execute the entire Agency Order at an improved price (or prices), the Agency Order will be executed against the solicited order at the proposed execution price so long as, at the time of execution: ([A]i) the execution price is equal to or better than the best bid or offer on the Nasdaq ISE, and ([B]ii) there are no Priority Customer Orders or Priority Customer Responses on the Exchange that are priced equal to the proposed execution price. If there are Priority Customer Orders or Priority Customer Responses on the Exchange on the opposite side of the Agency Order at the proposed execution price and there is sufficient size to execute the entire size of the Agency Order, the Agency Order will be executed against the bid or offer, and the solicited order will be cancelled. The aggregate size of all orders, quotes and Responses at the bid or offer will be used to determine whether the entire Agency Order can be executed. Both the solicited order and Agency Order will be cancelled if an execution would take place at a price that is inferior to the best bid or offer on the Nasdaq ISE, or if there is a Priority Customer on the book at the proposed execution price but there is insufficient size on the Exchange to execute the entire Agency Order.

(B) If at the time of execution there is sufficient size to execute the entire Agency Order at an improved price (or prices), the Agency Order will be executed at the improved price(s), subject to the condition in [(i)](A)(i), and the solicited order will be cancelled. The aggregate size of all orders, quotes and Responses at each price will be used to determine whether the entire agency order can be executed at an improved price (or prices).

(C) When executing the Agency Order against the bid or offer in accordance with paragraph [(i)](A) above, or at an improved price in accordance with paragraph [(ii)](B) above, Priority Customer Orders and Priority Customer Responses will be executed first. [Professional]Non-Priority Customer Orders, non-Priority Customer Responses, and Market Maker quotes participate next in the execution of the Agency Order based upon the percentage of the total number of contracts available at the best price that is represented by the size of the [Professional]non-Priority Customer Order, non-Priority Customer Response, or Market Maker quote.

(4)[(D)] If a trading halt is initiated after an order is entered into the Solicited Order Mechanism, such auction will be automatically terminated without execution.

(5)[(3)] Prior to entering Agency Orders into the Solicited Order Mechanism on behalf of a customer, EAMs must deliver to the customer a written notification informing the customer that its order may be executed using the Nasdaq ISE's Solicited Order Mechanism. Such written notification must disclose the terms and conditions contained in this Rule and must be in a form approved by the Exchange.

(e) **Complex Solicited Order Mechanism**. The Complex Solicited Order Mechanism is a process by which an Electronic Access Member can attempt to execute Complex Orders it represents as agent (the "Agency Complex Order") against contra orders that it solicited according to sub-paragraph (d) above. Each Complex Order entered into the Solicited Order Mechanism shall be designated as all-or-none, and each options leg must meet the minimum contract size requirement contained in sub-paragraph (d) above.

(1) – (4) No change.

(A) – (C) No change.

(D) When executing the Agency Complex Order against other interest in accordance with Options 3, Section 14(d)(2)(ii), Priority Customer Complex Orders and Priority Customer Responses will be executed first. [Professional]Non-Priority Customer Complex Orders and non-Priority Customer Responses participate next in the execution of the Agency Complex Order based upon the percentage of the total number of contracts available at the best price that is represented by the size of the [Professional]non-Priority Customer Complex Order or non-Priority Customer Response. Finally, for Complex Options Orders, bids and offers for the individual legs will be executed pursuant to Options 3, Section 15 and the Supplementary Material thereto.

(5) No change.

(f) – (g) No change.

Supplementary Material to Options 3, Section 11

.01 It will be a violation of a Member's duty of best execution to its customer if it were to cancel a facilitation order to avoid execution of the order at a better price. The availability of the Facilitation Mechanism does not alter a Member's best execution duty to get the best price for its customer. Accordingly, while facilitation orders can be canceled during the time period given for the entry of Responses, if a Member were to cancel a facilitation order when there was a superior price available on the Exchange and subsequently re-enter the facilitation order at the same facilitation price after the better price was no longer available without attempting to obtain that better price for its customer, there would be a presumption that the Member did so to avoid execution of its customer order in whole or in part by other brokers at the better price. Additionally, any solicited contra orders entered by Members into the Facilitation Mechanism to trade against Agency Orders may not be for the account of a Nasdaq ISE Market Maker that is assigned to the options class.

.02 No change.

.03 Under paragraph (d) above, Members may enter contra orders that are solicited. The Solicited Order Mechanism provides a facility for Members that locate liquidity for their customer orders. Members may not use the Solicited Order Mechanism to circumvent Exchange Options 3, Section 22(b[d]) limiting principal transactions. This may include, but is not limited to, Members entering contra orders that are solicited from (1) affiliated broker-dealers, or (2) broker-dealers with which the Member has an arrangement that allows the Member to realize similar economic benefits from the solicited transaction as it would achieve by executing the customer order in whole or in part as principal. Additionally, any solicited contra orders entered by Members to trade against Agency Orders may not be for the account of a Nasdaq ISE Market Maker that is assigned to the options class.

.04 No change.

.05[7] Penny Prices. Orders and Responses may be entered into the Block Order Mechanism and receive executions at penny increments. Orders and quotes in the market that receive the benefit of the block execution price under paragraph (a)(2)(A[i]) may also receive executions at penny increments.

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Section 13. Price Improvement Mechanism for Crossing Transactions

(a) The Price Improvement Mechanism is a process by which an Electronic Access Member can provide price improvement opportunities for a transaction wherein the Electronic Access Member seeks to facilitate an order it represents as agent, and/or a transaction wherein the Electronic Access Member solicited interest to execute against an order it represents as agent (a “Crossing Transaction”).

(b) **Crossing Transaction Entry**. A Crossing Transaction is comprised of the order the Electronic Access Member represents as agent (the “Agency Order”) and a counter-side order for the full size of the Agency Order (the “Counter-Side Order”). The Counter-Side

Order may represent interest for the Member's own account, or interest the Member has solicited from one or more other parties, or a combination of both.

(1) If the Agency Order is for less than 50 option contracts, and if the difference between the National Best Bid and National Best Offer (“NBBO”) is $0.01, the Crossing Transaction must be entered at one minimum price improvement increment better than the NBBO on the opposite side of the market from the Agency Order and better than the limit order or quote on the Nasdaq ISE order book on the same side of the Agency Order.

(2) If the Agency Order is for 50 option contracts or more, or if the difference between the NBBO is greater than $0.01, a Crossing Transaction must be entered only at a price that is equal to or better than the [national best bid or offer ("]NBBO[")] and better than the limit order or quote on the Nasdaq ISE order book on the same side of the Agency Order.

(3) The Crossing Transaction may be priced in one-cent increments.

(4) The Crossing Transaction may not be canceled, but the price of the Counter-Side Order may be improved during the exposure period.

(c) **Exposure Period**. Upon entry of a Crossing Transaction into the Price Improvement Mechanism, a broadcast message that includes the series, price and size of the Agency Order, and whether it is to buy or sell, will be sent to all Members. This broadcast message will not be included in the Nasdaq ISE disseminated best bid or offer and will not be disseminated through OPRA.

(1) The Exchange will designate via an Options Trader Alert a time of no less than 100 milliseconds and no more than 1 second for Members to indicate the size and price at which they want to participate in the execution of the Agency Order ("Improvement Orders").

(2) Improvement Orders may be entered by all Members in one-cent increments at the same price as the Crossing Transaction or at an improved price for the Agency Order, and will only be considered [for any size] up to the size of the Agency Order.

(3) During the exposure period, Improvement Orders may not be canceled, but may be modified to ([1]i) increase the size at the same price, or ([2]ii) improve the price of the Improvement Order for any size up to the size of the Agency Order.

(4) During the exposure period, responses (including the Counter-Side Order, Improvement Orders, and any changes to either) submitted by Members shall not be visible to other auction participants.

(5) The exposure period will automatically terminate (i) at the end of the time period designated by the Exchange pursuant to paragraph(c)(1) above, (ii) upon the receipt

of a market or marketable limit order on the Exchange in the same series, or (iii) upon the receipt of a non-marketable limit order in the same series on the same side of the market as the Agency Order that would cause the price of the Crossing Transaction to be outside of the best bid or offer on the Exchange.

(d) **Execution**. At the end of the exposure period the Agency Order will be executed in full at the best prices available, taking into consideration orders and quotes in the Exchange market, Improvement Orders, and the Counter-Side Order. The Agency Order will receive executions at multiple price levels if there is insufficient size to execute the entire order at the best price.

(1) At a given price, "Priority Customer Interest" (Priority Customer Orders and Improvement Orders from Priority Customers) is executed in full before "[Professional]non-Priority Customer Interest" ([Professional]non-Priority Customer Orders, Improvement Orders from non-Priority Customers and Market Maker quotes).

(2) After Priority Customer Interest at a given price, [Professional]non-Priority Customer Interest will participate in the execution of the Agency Order based upon the percentage of the total number of contracts available at the price that is represented by the size of such interest.

(3) In the case where the Counter-Side Order is at the same price as [Professional]non-Priority Customer Interest in (d)(2), the Counter-Side [o]Order will be allocated the greater of one (1) contract or forty percent (40%) (or such lower percentage requested by the Member) of the initial size of the Agency Order before [Professional]non-Priority Customer Interest is executed. Upon entry of Counter-Side [o]Orders, Members can elect to automatically match the price and size of orders, quotes and responses received during the exposure period up to a specified limit price or without specifying a limit price. [In this case]If a Member elects to auto-match, the Counter-Side [o]Order will be allocated the aggregate size of all competing quotes, orders and Improvement Orders[its full size] at each price point, or at each price point [within its limit price]up to the specified limit price if a limit is specified, until a price point is reached where the balance of the order can be fully executed. At such price point, the Counter-Side [o]Order shall be allocated the greater of one contract or forty percent (40%) (or such lower percentage requested by the Member) of the original size of the Agency Order, but only after Priority Customer Interest at such price point are executed in full. Thereafter, all [Professional]non-Priority Customer Interest at the price point will participate in the execution of the Agency Order based upon the percentage of the total number of contracts available at the price that is represented by the size of the [Professional]non-Priority Customer Interest. An election to automatically match better prices cannot be cancelled or altered during the exposure period.

(4) When a market order or marketable limit order on the opposite side of the market from the Agency Order ends the exposure period, it will participate in the execution

of the Agency Order at the price that is mid-way between the best counter-side interest and the NBBO, so that both the market or marketable limit order and the Agency Order receive price improvement. Transactions will be rounded, when necessary, to the $.01 increment that favors the Agency Order.

(5) If a trading halt is initiated after an order is entered into the Price Improvement Mechanism, such auction will be automatically terminated without execution.

(e) **Complex Price Improvement Mechanism**. The Price Improvement Mechanism is a process by which an Electronic Access Member can provide price improvement opportunities for a transaction wherein the Electronic Access Member seeks to facilitate an order it represents as agent, and/or a transaction wherein the Electronic Access Member solicited interest to execute against an order it represents as agent (a "Crossing Transaction").

(1) – (5) No change.

(i) At a given net price, Priority Customer interest on the Complex Order Book (i.e., Priority Customer Complex Orders and Improvement Complex Orders) is executed in full before [Professional]non-Priority Customer interest (i.e., [Professional]non-Priority Customer Complex Orders and Improvement Complex Orders) on the Complex Order Book.

(ii) After Priority Customer interest on the Complex Order Book at a given net price, [Professional]non-Priority Customer interest on the Complex Order Book will participate in the execution of the Agency Complex Order based upon the percentage of the total number of contracts available at the price that is represented by the size of such interest.

(iii) In the case where the Counter-Side Complex Order is at the same net price as [Professional]non-Priority Customer interest on the Complex Order Book in (ii) above, the Counter-Side Complex Order will be allocated the greater of one (1) contract or forty percent (40%) (or such lower percentage requested by the Member) of the initial size of the Agency Complex Order before other [Professional]non-Priority Customer interest on the Complex Order Book are executed. Upon entry of Counter-Side Complex Orders, Members can elect to automatically match the price and size of Complex Orders[,] and Improvement Complex Orders received on the Complex Order Book during the exposure period up to a specified limit net price or without specifying a limit net price. This election will also automatically match the net price available from the ISE best bids and offers on the individual legs for the full size of the order; provided that with notice to Members the Exchange may determine whether to offer this option only for Complex Options Orders, Stock-Option Orders, and/or Stock Complex Orders. If a Member elects to auto-match, the Counter-Side Complex Order will be allocated [its full size]the aggregate size of all competing Complex Orders and Improvement Complex Orders at each price point, or at each price point [within its limit net price]up to the specified limit net price if a limit is specified, until a price point is reached where the balance of the order can be fully executed. At such price point, the Counter-Side Complex Order shall be allocated the greater of one contract or forty percent (40%) (or such lower percentage requested by the Member) of the original size of the Agency Complex Order, but only after Priority Customer Complex Orders and Improvement Complex Orders at such price point are executed in full. Thereafter, all [Professional]non-Priority Customer Complex Orders and Improvement Complex Orders at the price point will participate in the execution of the Agency Complex Order based upon the percentage of the total number of contracts available at the price that is represented by the size of the [Professional]non-Priority Customer Complex Order or Improvement Complex Order on the Complex Order Book.

(iv) – (v) No change.

Supplementary Material to Options 3, Section 13

.01 - .03 No change.

.04 Only one PIM may be ongoing at any given time in a series. PIMs will not queue or overlap in any manner, except as described in Options 3, Section 11(f) and (g).

.05 - .08 No change.

Section 14. Complex Orders

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Supplementary Material to Options 3, Section 14

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.03 *Trade Value Allowance*. To facilitate the execution of the stock leg and options leg(s) of Stock-Option Strategies and Stock-Complex Strategies at valid increments pursuant to subparagraph (c)(1), Stock-Option Strategies and Stock-Complex Strategies may trade outside of their expected notional trade value by a specified amount ("Trade Value Allowance"). The Trade Value Allowance is the percentage difference between the expected notional value of a trade and the actual notional value of the trade. The amount of Trade Value Allowance permitted may be determined by the Member, or a default value determined by the Exchange and announced to Members; provided that any amount of Trade Value Allowance is permitted in complex mechanisms pursuant to Options 3, Sections 11 and 13 when auction orders do not trade solely with their contra-side order.

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Section 15. Simple Order Risk Protections

(a) No change.

(1) – (2) No change.

(3) The following are Market Maker risk protections on ISE:

(A) **Anti-Internalization**. Quotes and orders entered by Market Makers will not be executed against quotes and orders entered on the opposite side of the market by the same Market Maker using the same Market Maker identifiers, or alternatively, if selected by the Member, the same Exchange account number or Member firm identifier. In such a case, the System will cancel the resting quote or order back to the entering party prior to execution. This functionality shall not apply in any auction, during an Opening Process, or with respect to Complex Order transactions.

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Options 4B Reserved.

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Options 5 Order Protection and Locked and Crossed Markets

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Section 2. Order Protection

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Supplementary Material to Options 5, Section 2

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.02 When [the automatic execution of] an incoming order is priced at or through the ABBO, when the ABBO is better than the Exchange BBO [would result in an impermissible Trade Through], such order shall be exposed at the current NBBO to all Exchange Members for a time period established by the Exchange not to exceed one (1) second. During the exposure period, Exchange Members may enter responses up to the size of the order being exposed in the regular trading increment applicable to the option. If a trading halt is initiated during the exposure period, the exposure period will be terminated without execution.

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