

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 40

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

File No. * SR 2023 - * 22

Amendment No. (req. for Amendments *)

Filing by Nasdaq ISE, LLC

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

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
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Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	Rule		Submit with link to Prefiling or Request for Waiver option
			<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input checked="" type="checkbox"/> 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 *).

Amend Complex Order Rules

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 * Angela Last Name * Dunn

Title * Principal Associate General Counsel

E-mail * angela.dunn@nasdaq.com

Telephone * (215) 496-5692 Fax


Signature

Pursuant to the requirements of the Securities Exchange of 1934, Nasdaq ISE, LLC has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date 10/03/2023 (Title *)

By John Zecca EVP and Chief Legal Officer
(Name *)

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

 Date: 2023.10.03 11:56:07 -04'00'

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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SR-ISE-2023-22 19b-4.doc

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 *

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SR-ISE-2023-22 Exhibit 1.doc

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 Advanced Notice by Clearing Agencies *

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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 2- Notices, Written Comments, Transcripts, Other Communications

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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 Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

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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 Sent As Paper Document

Exhibit 4 - Marked Copies

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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

SR-ISE-2023-22 Exhibit 5.doc

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

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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 (“Commission”) a proposal to amend Options 3, Section 11, Auction Mechanisms, and Options 3, Section 13, Price Improvement Mechanisms for Crossing Transactions.

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 (the “Board”). Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

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

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

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

a. Purpose

In connection with a technology migration to an enhanced Nasdaq, Inc.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

(“Nasdaq”) functionality, the Exchange proposes to amend certain auction rules³ which describe the short sale price test in Rule 201 of Regulation SHO. Specifically, the Exchange proposes to adopt a new sentence within Options 3, Section 11, Auction Mechanisms, and Options 3, Section 13, Price Improvement Mechanisms for Crossing Transactions, to add further detail to the recently adopted stock-tied rule text. This rule change is identical to a rule change filed by Nasdaq MRX, LLC (“MRX”).⁴

Background

Today, ISE Members may trade certain Stock-Option Orders as described in ISE Options 3, Section 14(a)(2)⁵ and Stock-Complex Orders as described in ISE Options 3, Section 14(a)(3)⁶, among other things. ISE recently filed a rule change to amend its

³ See Securities Exchange Act Release No. 98066 (August 7, 2023), 88 FR 54672 (SR-ISE-2023-13) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend ISE Rules Related to Complex Orders with Respect to a System Migration) (“SR-ISE-2023-13”).

⁴ See Securities Exchange Act Release No. 98599 (September 28, 2023) (SR-MRX-2023-18) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend its Complex Order Rules) (not yet published).

⁵ The term “Stock-Option Order” refers to an order for a Stock-Option Strategy as defined in Options 3, Section 14(a)(2). A Stock-Option Strategy is the purchase or sale of a stated number of units of an underlying stock or a security convertible into the underlying stock (“convertible security”) coupled with the purchase or sale of options contract(s) on the opposite side of the market representing either (A) the same number of units of the underlying stock or convertible security, or (B) the number of units of the underlying stock necessary to create a delta neutral position, but in no case in a ratio greater than eight-to-one (8.00), where the ratio represents the total number of units of the underlying stock or convertible security in the option leg to the total number of units of the underlying stock or convertible security in the stock leg. See ISE Options 3, Section 14(a)(2).

⁶ The term “Stock-Complex Order” refers to an order for a Stock-Complex Strategy as defined in Options 3, Section 14(a)(3). A Stock-Complex Strategy is the purchase or sale of a stated number of units of an underlying stock or a security convertible into the underlying stock (“convertible security”) coupled with the purchase or sale of a Complex Options Strategy on the opposite side of the market representing either (A) the same number of units of the underlying stock or convertible security, or (B) the number of units of the underlying stock necessary to create a delta neutral position, but in no case in a ratio greater than eight-to-one (8.00), where the ratio represents the total number of units of the underlying stock or convertible security in the option legs to the total number of units of the underlying stock or convertible security in the stock leg. Only those Stock-Complex Strategies with no more than the applicable number of legs, as determined by the Exchange on a class-by-class basis, are eligible for processing. See ISE Options 3, Section 14(a)(3).

stock-tied functionality in connection with a technology migration.⁷ Among other things, the proposal added Supplementary Material .08(c) to Options 3, Section 11 and Supplementary Material .09(c) to Options 3, Section 13⁸ to address the short sale price test in Rule 201 of Regulation SHO with respect to Complex PIM Orders,⁹ Complex Facilitation Orders¹⁰ and Complex SOM Orders.¹¹ The rule states that when the short sale price test in Rule 201 of Regulation SHO is triggered for a covered security, Nasdaq Execution Services, LLC (“NES”)¹², will not execute a short sale order in the underlying covered security component of a Complex Facilitation Order, Complex SOM Order and/or Response, or in the underlying security component of a Complex PIM Order and/or Improvement Order, if the price is equal to or below the current national best bid.¹³ However, NES will execute a short sale order in the underlying covered security component of a Complex Facilitation Order, Complex SOM Order and/or Response, or in the underlying security component of a Complex PIM Order and/or Improvement Order, if such order is marked “short exempt,” regardless of whether it is at a price that is equal

⁷ See SR-ISE-2023-13.

⁸ Id.

⁹ A Complex PIM Order is an order entered into the Complex Price Improvement Mechanism as described in Options 3, Section 13(e). See ISE Options 3, Section 14(b)(18).

¹⁰ A Complex Facilitation Order is an order entered into the Complex Facilitation Mechanism as described in Options 3, Section 11(c). See ISE Options 3, Section 14(b)(16).

¹¹ A Complex SOM Order is an order entered into the Complex Solicited Order Mechanism as described in Options 3, Section 11(e). See ISE Options 3, Section 14(b)(17).

¹² NES is a broker-dealer owned and operated by Nasdaq, Inc. NES, an affiliate of the Exchange, has been approved by the Commission to become a Member of the Exchange and perform inbound routing on behalf of the Exchange.

¹³ See ISE Supplementary Material .08(c) to Options 3, Section 11 and ISE Supplementary Material .09(c) to Options 3, Section 13. The term “covered security” has the same meaning as in Rule 201(a)(1) of Regulation SHO.

to or below the current national best bid.¹⁴ Further, if NES cannot execute the underlying covered security component of a Complex Facilitation Order, Complex SOM Order and/or Response, or Complex PIM Order and/or Improvement Order, in accordance with Rule 201 of Regulation SHO, the Exchange will cancel back the Complex Facilitation Order, Complex SOM Order and/or Response or Complex PIM Order and/or Improvement Order to the entering Member.

Proposal

At this time, the Exchange proposes to amend its Complex SOM, Complex Facilitation, and Complex PIM rules to add a new sentence within Supplementary Material .08(c) to Options 3, Section 11 and Supplementary Material .09(c) to Options 3, Section 13 that describes the manner in which NES would execute a short sale order in the underlying covered security component of Response, Improvement Complex Order, or unrelated Limit Complex Order on the Complex Order Book (1) when the facilitating Electronic Access Member's contra-order, the solicited contra-side Complex Order, or the Counter-Side Order does not include a short sale order in the underlying covered security component; or (2) when the facilitating Electronic Access Member's contra-order, the solicited contra-side Complex Order, or the Counter-Side Order includes a short sale order in the underlying security component. As described more fully below, in the first case NES would execute the underlying covered security component of the Response, Improvement Complex Order, or unrelated Limit Complex Order on the Complex Order Book at its stated limit price. In the second case, NES would execute the underlying security component of the Response, Improvement Complex Order, or

¹⁴ See ISE Supplementary Material .08(c) to Options 3, Section 11 and ISE Supplementary Material .09(c) to Options 3, Section 13.

unrelated Limit Complex Order on the Complex Order Book at its stated limit price or better.

The proposed rules will make clear to Members who submit auction responses or Improvement Orders that include a short sale order, or Members that place orders on the Complex Order Book that include a short sale order, the manner in which NES will execute the short sale component of their order when their Response, Improvement Complex Order, or unrelated Limit Complex Order on the Complex Order Book executes in the Complex SOM, Complex Facilitation, and Complex PIM auction, (i.e. their short sale order will execute at its stated limit price, but not at a better price) if the facilitating Electronic Access Member's contra-order, the solicited contra-side Complex Order, or the Counter-Side Order does not include a short sale order. However their short sale order will execute at its stated limit price or better if the facilitating Electronic Access Member's contra-order, the solicited contra-side Complex Order, or the Counter-Side Order includes a short sale order. Thus, whether a short sale order included in an auction receives its stated limit price, or potentially receives a better price than its limit price, depends on whether the contra-side order submitted to the auction with an agency order also included a short sale order. Although the availability of the potential for price improvement for the responder's short sale order will vary, depending on whether the contra-order also included a short sale order, ISE notes that for the reasons described below the alternative would be to exclude auction orders that include a short sale order from the Complex SOM, Complex Facilitation, and Complex PIM altogether, which would decrease competition in the auction and potentially reduce opportunities for the agency order to receive price improvement in the auctions. Below are some examples of

Complex PIM Auction responses (“Improvement Orders”) executing within a Complex PIM Auction.¹⁵

Example No. 1 – Complex PIM Auction utilizing stated limit price

ISE BBO for option leg is 0.05 x 0.10

Underlying equity NBBO is 1.05 x 1.10

Reg SHO short sale price test is triggered in the underlying

Stock-Option Strategy is created to buy 1 put, buy 100 shares (cBBO for this strategy is 1.10 x 1.20)

Complex PIM to buy strategy, 100 @ 1.13 (buy stock @ 1.08 and options @ 0.05)¹⁶; Counter-Side Order does not include a short sale order

Improvement Complex Order1 is a Priority Customer Order to sell, sell short stock leg, 100 @ 1.11 (sell stock @ 1.06 and options @ 0.05)

Improvement Complex Order2 to sell, sell short stock leg, 100 @ 1.12 (sell stock @ 1.07 and options @ 0.05)

Complex PIM auction timer concludes

Improvement Complex Order1 trades with Complex PIM Agency Order, option @ 0.05 and stock @ 1.06 for net price of 1.11. The Improvement Complex Order may not trade the underlying equity at 1.05 because it cannot execute a short sale order at a price that is equal to the NBB of the underlying equity.

Example No. 2 - Complex PIM Auction utilizing stated limit price

ISE BBO for option leg is 0.05 x 0.10

Underlying equity NBBO is 1.05 x 1.10

Reg SHO short sale price test is triggered in the underlying

¹⁵ While the examples utilize the Complex PIM auction, the same examples apply to a Complex SOM or Complex Facilitation auction.

¹⁶ The Exchange notes that different combinations of stock and options prices could determine the strategy prices in this Example 1 as well as Examples 2 and 3. The Exchange is assuming the noted prices for the examples, however the Exchange notes that multiple price points could achieve the net prices in these examples. In this particular case in Example 1, the agency order could buy stock @ 1.07 and buy options @ 0.06 in lieu of the prices noted.

Stock-Option Strategy is created to buy 1 put, buy 100 shares (cBBO for this strategy is 1.10 x 1.20)

Complex PIM to buy strategy, 100 @ 1.13 (buy stock @ 1.08 and options @ 0.05); Counter-Side Order does not include a short sale order

Improvement Complex Order1 is a Priority Customer Order to sell, sell short stock leg, 100 @ 1.10 (sell stock @ 1.05 and options @ 0.05)

Improvement Complex Order2 to sell, sell short stock leg, 100 @ 1.12 (sell stock @ 1.06 and options @ 0.06)

Complex PIM auction timer concludes

Improvement Complex Order2 trades with Complex PIM Agency Order, option @ 0.06 and stock @ 1.06 for net price of 1.12. Since the Counter-Side Order does not include a short sale order, Improvement Complex Order1 is considered for execution at its stated limit price of 1.10; since it cannot trade at 1.10 due to Reg SHO, it does not trade with the Complex PIM Agency Order.

Example No. 3 - Complex PIM Auction where Counter-Side is also short selling

ISE BBO for option leg is 0.05 x 0.10

Underlying equity NBBO is 1.05 x 1.20

Counter-Side Order includes a short sale order

Reg SHO short sale price test is triggered in the underlying

Stock-Option Strategy is created to buy 1 put, buy 100 shares (cBBO for this strategy is 1.10 x 1.30)

Complex PIM to Buy strategy, 100 @ 1.13, Counter-Side Order is a Market Order that is willing to auto-match at any price point within Reg SHO price restriction bound and has 'sell short' stock leg instructions and therefore cannot trade the stock component at any price less than or equal to the underlying best bid of \$1.05. In this example, if the Counter-Side Order did not have a "sell short" instruction it would not be required to trade at a price that is better than the NBB for security (\$1.05) and could execute at a price equal to or less than the underlying best bid of \$1.05. The price of 1.10 is the cBB (net of option and underlying NBB).

Improvement Complex Order1 is to sell, sell short stock leg, 100 @ 1.10 (selling stock at 1.05 and options at 0.05; note it cannot trade at 1.10 due to Reg SHO)

Improvement Complex Order2 to sell, sell short stock leg, 100 @ 1.12 (selling stock at 1.06 and options at 0.06)

Complex PIM auction timer concludes

The Complex PIM Agency Order first executes 40 contracts with the Counter-Side Market Order, the option leg at 0.05 and stock leg at 1.06 for a net price of 1.11. The remaining 60 contracts from the Complex Agency Order then execute with Improvement Complex Order1 at the same price. In this example, both the Complex Counter-Side Order and the Improvement Complex Order are marked short sale, which permits the Improvement Complex Order to trade at a price that is better than its stated limit price.

In this example, the Improvement Complex Order traded at its next available price in lieu of its stated limit price because both the Counter-Side Order and the Improvement Complex Order included a short sale order in the underlying component security. In contrast, if the Counter-Side Order did not include a short sale order than the Counter-Side Order and Improvement Complex Order2 trade with the Complex PIM Agency Order for net price of 1.12 (option @ 0.06 and stock @ 1.06).

The Exchange proposes to amend the rule text in Supplementary Material .08 to Options 3, Section 11 with respect to a SOM and Facilitation auction to provide:

When a response or an unrelated limit complex order on the complex order book includes a short sale order in the underlying covered security, NES will execute such order at (1) its stated limit price if the facilitating Electronic Access Member's contra order or contra-side solicited Complex Order does not include a short sale order in the underlying security; or (2) its stated limit price or better if the facilitating Electronic Access Member' contra order or the solicited contra-side Complex Order includes a short sale order in the underlying covered security.

With respect to a Complex PIM auction, the Exchange proposes to amend the rule text within Supplementary Material .09 to Options 3, Section 13 to provide:

When an improvement order or an unrelated limit complex order on the complex order book includes a short sale order in the underlying covered security, NES will execute such order at (1) its stated limit price if the Counter-Side Order does not include a short sale order in the underlying security; or (2) its stated limit price or better if the counter-side order includes a short sale order in the underlying covered security.

In such case where a response or an unrelated limit complex order on the complex order book includes a short sale order in the underlying covered security, NES will execute the

order at its stated limit price if the facilitating Electronic Access Member's contra order, contra-side solicited Complex Order, or Counter-Side Order **does not include a short sale order** in the underlying covered security because the Exchange desires to foster competition by including responses that have a short sale order in the underlying covered security. In this scenario, the Exchange would consider all prices submitted by responders at which the auction may execute because the Electronic Access Member's contra order, contra-side solicited Complex Order, or Counter-Side Order does not need to comply with the short sale price test in Rule 201 of Regulation SHO because the order is not short. By using the order's stated limit price in this case, the Exchange would allow the responder with a short sale order to participate in the auction and allocate the best price possible to the agency order while complying with the short sale price test.¹⁷ The Exchange believes that including responses with a short sale order in the underlying covered security may create additional competition in the Complex SOM, Complex Facilitation and Complex PIM auction while also providing additional opportunity for potential price improvement for the agency order.

When a response, Improvement Order, or an unrelated limit complex order on the complex order book includes a short sale order in the underlying covered security, NES will execute the order at its stated limit price or better if the facilitating Electronic Access Member contra order, solicited contra-side Complex Order, or Counter-Side Order

¹⁷ For example, utilizing a Complex PIM auction with a BBO of 0.05 x 0.10 and an NBBO for the underlying security component of 1.05 x 1.10, if the Initiating Order submitted an agency order to buy @ 1.13 and a contra-order to sell @ 1.13, with auto-match at any price point, and Responder1 was long @ 1.10, and Responder2 was short @ 1.10 (in this scenario 1.10 would not comply with the short sale price test), pursuant to the proposed amendment, the agency order would receive a price improvement allocation @ 1.10. In this scenario the improved price of 1.11 would not be allocated to the responder with a short sale rather the price improvement would be applied to the agency order. The Exchange believes it is important to offer price improvement to the agency order over the responder to the auction. Of note, the responder that was short @ 1.10 would be cancelled.

includes a short sale order in the underlying security component. In this case, each short sale compliant price would be considered in determining the price at which the auction may execute, which would be at its stated limit price or better. In this scenario, because the Electronic Access Member contra order, solicited contra-side Complex Order, or Counter-Side Order are short, the Exchange will only consider prices that comply with the short sale price test in Rule 201 of Regulation SHO. In this case, all prices that are compliant with the short sale price test are considered when allocating the auction, and both the agency order and responders may receive a better price. The auction would allocate at the agency order's stated limited price or better depending on the prices of the responses. The auction responses may execute at their stated limited price or better depending on the final auction price.

This is in contrast to the prior scenario where the Electronic Access Member's contra order, contra-side solicited Complex Order, or Counter-Side Order does not need to comply with the short sale price test. Utilizing the proposed stated limit price or better where a Member's contra order, contra-side solicited Complex Order, or Counter-Side Order includes a short sale order allows the Exchange to potentially provide price improvement opportunity to the agency order.

Implementation

The Exchange intends to begin implementation of the proposed rule change prior to December 20, 2024. The implementation would commence with a limited symbol migration and continue to migrate symbols over several weeks. The Exchange will issue an Options Trader Alert to Members to provide notification of the symbols that will migrate and the relevant dates.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁹ in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest for the reasons discussed below.

With respect to short sale regulation, the proposed handling of the stock/ETF component of a Complex Order under this proposal does not raise any issues of compliance with the currently operative provisions of Regulation SHO²⁰ and, therefore, the proposal promotes just and equitable principles of trade. When a Complex Order has a stock/ETF component, Members must indicate, pursuant to Regulation SHO, whether that order involves a long or short sale. NES, as a trading center under Rule 201, will be compliant with the requirements of Regulation SHO. Of course, broker-dealers, including both NES and the Members submitting orders to ISE with a stock/ETF component, must comply with Regulation SHO. NES' compliance team updates, reviews and monitors NES' policies and procedures including those pertaining to Regulation SHO on an annual basis.

In the case where a response, Improvement Order, or an unrelated limit complex order includes a short sale order in the underlying covered security, executing such order at its stated limit price when the facilitating Electronic Access Member's contra order, contra-side Complex Order, or Counter-Side Order **does not include a short sale** order in the underlying security would protect investors and the public interest by considering

¹⁸ 15 U.S.C. 78f(b).

¹⁹ 15 U.S.C. 78f(b)(5).

²⁰ 17 CFR 242.200 *et seq.*

all prices at which the auction could execute. Under these circumstance, the Response, Improvement Complex Order, or unrelated Limit Complex Order would be considered for execution at its stated limit price (provided the limit price is compliant with the short sale price test in Rule 201 of Regulation SHO) while the Electronic Access Member's contra order, contra-side solicited Complex Order, or Counter-Side Order does not need to comply with the short sale price test in Rule 201 of Regulation SHO because the order is not short. Utilizing the order's stated limit price in this case allows the responder with a short sale order to participate in the auction while the agency order is allocated the best price possible while complying with the short sale price test. The Exchange believes that this behavior is consistent with the protection of investors and the public interest because it attempts to afford price improvement to the agency order over the responder to the auction. Finally, the Exchange believes that including responses with a short sale order in the underlying covered security may create additional competition in the Complex SOM, Complex Facilitation and Complex PIM auction and provides the agency order with additional opportunities for potential price improvement.

In contrast, when the facilitating Electronic Access Member's contra order, contra-side Complex Order, or Counter-Side Order **includes a short sale order** in the underlying covered security, the auction must be allocated at a price that is short sell compliant. In this case, each short sale compliant price would be considered in determining the price at which the Complex SOM, Complex Facilitation and Complex PIM auction may execute and, because the Electronic Access Member contra order, solicited contra-side Complex Order, or Counter-Side Order are short, the Exchange will only consider prices that comply with the short sale price test in Rule 201 of Regulation

SHO. As a result, the auction may allocate at the agency order's stated limited price or better depending on the prices of the responses. Also, the auction responses may execute at their stated limited price or better depending on the final auction price. The Exchange believes its proposal is consistent with the Act and the protection of investors because both the agency order and responders may receive a better price in this case. This is in contrast to the prior scenario where the Electronic Access Member's contra order, contra-side solicited Complex Order, or Counter-Side Order does not need to comply with the short sale price test. Utilizing the proposed stated limit price or better where a Member's contra order, contra-side solicited Complex Order, or Counter-Side Order includes a short sale order allows the Exchange to potentially provide a price improvement opportunity to the agency order and to the auction response. With the proposed amendments, Complex SOM, Complex Facilitation, and Complex PIM auction responders who submit a response would be aware of the auction price that would comply with the short sale price test in Rule 201 of Regulation SHO. The proposed amendment allows Members to participate in auctions with a short sale response and such participation facilitates competition in these auctions. This proposed approach is in lieu of prohibiting Members whose auction Responses or resting Limit Complex Orders include a short sale order from responding to these auctions, which would limit competition in the auction. By allowing additional responses to participate in the auction, the Exchange believes that the proposal would benefit investors and the public interest because the additional interest may increase competition in these auctions, which may lead to better prices.

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.

Where a response, Improvement Order, or an unrelated limit complex order includes a short sale order in the underlying covered security, executing such order at its stated limit price when the facilitating Electronic Access Member's contra order, contra-side Complex Order, or Counter-Side Order **does not include a short sale order** in the underlying covered security does not impose an undue burden on intra-market competition because the Exchange would uniformly consider all prices submitted by responders in determining the allocation price because the Electronic Access Member's contra order, contra-side solicited Complex Order, or Counter-Side Order does not need to comply with the short sale price test in Rule 201 of Regulation SHO because the order is not short. Where a response, Improvement Order, or an unrelated limit complex order includes a short sale order in the underlying covered security, executing such order at its stated limit price or better when the facilitating Electronic Access Member's contra order, contra-side Complex Order, or Counter-Side Order **is also a short sale order** in the underlying covered security component does not impose an undue burden on intra-market competition because the Exchange would uniformly consider all prices that are compliant with the short sale price test when allocating the auction.

Where a response, Improvement Order, or an unrelated limit complex order includes a short sale order in the underlying covered security, executing such order at its stated limit price when the facilitating Electronic Access Member's contra order, contra-side Complex Order, or Counter-Side Order does not include a short sale order in the underlying covered security and executing such order its stated limit price or better when

the facilitating Electronic Access Member contra-order, solicited contra-side Complex Order, or Counter-Side Order is also a short sale order in the underlying covered security component does not impose an undue burden on inter-market competition because other options exchanges today may offer a similar process for handling stock-tied transactions that have a short sale order.

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

No written comments were either solicited or received.

6. Extension of Time Period for Commission Action

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

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii)²¹ of the Act and Rule 19b-4(f)(6) thereunder²² in that it effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

The Exchange believes that the proposal does not significantly affect the protection of investors or the public interest. Where a response, Improvement Order, or an unrelated limit complex order includes a short sale order in the underlying covered

²¹ 15 U.S.C. 78s(b)(3)(A)(iii).

²² 17 CFR 240.19b-4(f)(6).

security, executing such order at its stated limit price when the facilitating Electronic Access Member's contra order, contra-side Complex Order, or Counter-Side Order does **not** include a short sale order in the underlying covered security does not significantly affect the protection of investors or the public interest because including responses with a short sale order in the underlying covered security would create additional competition in the Complex SOM, Complex Facilitation and Complex PIM auction while also providing additional opportunities for potential price improvement for the agency order. Where a response, Improvement Order, or an unrelated limit complex order includes a short sale order in the underlying covered security, executing such order at its stated limit price or better when the facilitating Electronic Access Member's contra order, contra-side Complex Order, or Counter-Side Order also includes a short sale order in the underlying covered security component does not significantly affect the protection of investors or the public interest because all prices that are compliant with the short sale price test are considered when allocating the auction, and the auction would allocate at the stated limited price or better depending on the responses and potentially provide price improvement opportunity to the agency order.

Where a response, Improvement Order, or an unrelated limit complex order includes a short sale order in the underlying covered security, executing such order at its stated limit price when the facilitating Electronic Access Member's contra order, contra-side Complex Order, or Counter-Side Order does not include a short sale order in the underlying security component and executing such order at its stated limit price or better when the facilitating Electronic Access Member's contra order, contra-side Complex Order, or Counter-Side Order includes a short sale order in the underlying security

component does not impose any significant burden on intra-market competition because other options exchanges today may offer a similar process for handling stock-tied transactions that have a short sale order. Where a response, Improvement Order, or an unrelated limit complex order includes a short sale order in the underlying covered security, executing such order at its stated limit price when the facilitating Electronic Access Member's contra order, contra-side Complex Order, or Counter-Side Order does not include a short sale order in the underlying security and executing such order at its stated limit price or better when the facilitating Electronic Access Member's contra order, contra-side Complex Order, or Counter-Side Order includes a short sale order in the underlying security component does not impose any significant burden on inter-market competition because other options exchanges today may offer a similar process for handling stock-tied transactions that have a short sale order.

Furthermore, Rule 19b-4(f)(6)(iii)²³ 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.

²³ 17 CFR 240.19b-4(f)(6)(iii).

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

This rule change is identical to a rule change filed by MRX.²⁴

. 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.

²⁴ See Securities Exchange Act Release No. 98599 (September 28, 2023) (SR-MRX-2023-18) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend its Complex Order Rules) (not yet published).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-ISE-2023-22)

October __, 2023

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend its Complex Order Rules

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 October 3, 2023, 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 Options 3, Section 11, Auction Mechanisms, and Options 3, Section 13, Price Improvement Mechanisms for Crossing Transactions.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

In connection with a technology migration to an enhanced Nasdaq, Inc. (“Nasdaq”) functionality, the Exchange proposes to amend certain auction rules³ which describe the short sale price test in Rule 201 of Regulation SHO. Specifically, the Exchange proposes to adopt a new sentence within Options 3, Section 11, Auction Mechanisms, and Options 3, Section 13, Price Improvement Mechanisms for Crossing Transactions, to add further detail to the recently adopted stock-tied rule text. This rule change is identical to a rule change filed by Nasdaq MRX, LLC (“MRX”).⁴

Background

Today, ISE Members may trade certain Stock-Option Orders as described in ISE Options 3, Section 14(a)(2)⁵ and Stock-Complex Orders as described in ISE Options 3,

³ See Securities Exchange Act Release No. 98066 (August 7, 2023), 88 FR 54672 (SR-ISE-2023-13) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend ISE Rules Related to Complex Orders with Respect to a System Migration) (“SR-ISE-2023-13”).

⁴ See Securities Exchange Act Release No. 98599 (September 28, 2023) (SR-MRX-2023-18) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend its Complex Order Rules) (not yet published).

⁵ The term “Stock-Option Order” refers to an order for a Stock-Option Strategy as defined in Options 3, Section 14(a)(2). A Stock-Option Strategy is the purchase or sale of a stated number of units of an underlying stock or a security convertible into the underlying stock (“convertible security”) coupled with the purchase or sale of options contract(s) on the opposite side of the market representing either (A) the same number of units of the underlying stock or convertible security, or (B) the number of units of the underlying stock necessary to create a delta neutral position, but in no case in a ratio greater than eight-to-one (8.00), where the ratio represents the total number of units of the underlying stock or convertible security in the option leg to the total number of units of the underlying stock or convertible security in the stock leg. See ISE Options 3, Section 14(a)(2).

Section 14(a)(3)⁶, among other things. ISE recently filed a rule change to amend its stock-tied functionality in connection with a technology migration.⁷ Among other things, the proposal added Supplementary Material .08(c) to Options 3, Section 11 and Supplementary Material .09(c) to Options 3, Section 13⁸ to address the short sale price test in Rule 201 of Regulation SHO with respect to Complex PIM Orders,⁹ Complex Facilitation Orders¹⁰ and Complex SOM Orders.¹¹ The rule states that when the short sale price test in Rule 201 of Regulation SHO is triggered for a covered security, Nasdaq Execution Services, LLC (“NES”)¹², will not execute a short sale order in the underlying covered security component of a Complex Facilitation Order, Complex SOM Order and/or Response, or in the underlying security component of a Complex PIM Order and/or Improvement Order, if the price is equal to or below the current national best

⁶ The term “Stock-Complex Order” refers to an order for a Stock-Complex Strategy as defined in Options 3, Section 14(a)(3). A Stock-Complex Strategy is the purchase or sale of a stated number of units of an underlying stock or a security convertible into the underlying stock (“convertible security”) coupled with the purchase or sale of a Complex Options Strategy on the opposite side of the market representing either (A) the same number of units of the underlying stock or convertible security, or (B) the number of units of the underlying stock necessary to create a delta neutral position, but in no case in a ratio greater than eight-to-one (8.00), where the ratio represents the total number of units of the underlying stock or convertible security in the option legs to the total number of units of the underlying stock or convertible security in the stock leg. Only those Stock-Complex Strategies with no more than the applicable number of legs, as determined by the Exchange on a class-by-class basis, are eligible for processing. See ISE Options 3, Section 14(a)(3).

⁷ See SR-ISE-2023-13.

⁸ Id.

⁹ A Complex PIM Order is an order entered into the Complex Price Improvement Mechanism as described in Options 3, Section 13(e). See ISE Options 3, Section 14(b)(18).

¹⁰ A Complex Facilitation Order is an order entered into the Complex Facilitation Mechanism as described in Options 3, Section 11(c). See ISE Options 3, Section 14(b)(16).

¹¹ A Complex SOM Order is an order entered into the Complex Solicited Order Mechanism as described in Options 3, Section 11(e). See ISE Options 3, Section 14(b)(17).

¹² NES is a broker-dealer owned and operated by Nasdaq, Inc. NES, an affiliate of the Exchange, has been approved by the Commission to become a Member of the Exchange and perform inbound routing on behalf of the Exchange.

bid.¹³ However, NES will execute a short sale order in the underlying covered security component of a Complex Facilitation Order, Complex SOM Order and/or Response, or in the underlying security component of a Complex PIM Order and/or Improvement Order, if such order is marked “short exempt,” regardless of whether it is at a price that is equal to or below the current national best bid.¹⁴ Further, if NES cannot execute the underlying covered security component of a Complex Facilitation Order, Complex SOM Order and/or Response, or Complex PIM Order and/or Improvement Order, in accordance with Rule 201 of Regulation SHO, the Exchange will cancel back the Complex Facilitation Order, Complex SOM Order and/or Response or Complex PIM Order and/or Improvement Order to the entering Member.

Proposal

At this time, the Exchange proposes to amend its Complex SOM, Complex Facilitation, and Complex PIM rules to add a new sentence within Supplementary Material .08(c) to Options 3, Section 11 and Supplementary Material .09(c) to Options 3, Section 13 that describes the manner in which NES would execute a short sale order in the underlying covered security component of Response, Improvement Complex Order, or unrelated Limit Complex Order on the Complex Order Book (1) when the facilitating Electronic Access Member’s contra-order, the solicited contra-side Complex Order, or the Counter-Side Order does not include a short sale order in the underlying covered security component; or (2) when the facilitating Electronic Access Member’s contra-

¹³ See ISE Supplementary Material .08(c) to Options 3, Section 11 and ISE Supplementary Material .09(c) to Options 3, Section 13. The term “covered security” has the same meaning as in Rule 201(a)(1) of Regulation SHO.

¹⁴ See ISE Supplementary Material .08(c) to Options 3, Section 11 and ISE Supplementary Material .09(c) to Options 3, Section 13.

order, the solicited contra-side Complex Order, or the Counter-Side Order includes a short sale order in the underlying security component. As described more fully below, in the first case NES would execute the underlying covered security component of the Response, Improvement Complex Order, or unrelated Limit Complex Order on the Complex Order Book at its stated limit price. In the second case, NES would execute the underlying security component of the Response, Improvement Complex Order, or unrelated Limit Complex Order on the Complex Order Book at its stated limit price or better.

The proposed rules will make clear to Members who submit auction responses or Improvement Orders that include a short sale order, or Members that place orders on the Complex Order Book that include a short sale order, the manner in which NES will execute the short sale component of their order when their Response, Improvement Complex Order, or unrelated Limit Complex Order on the Complex Order Book executes in the Complex SOM, Complex Facilitation, and Complex PIM auction, (i.e. their short sale order will execute at its stated limit price, but not at a better price) if the facilitating Electronic Access Member's contra-order, the solicited contra-side Complex Order, or the Counter-Side Order does not include a short sale order. However their short sale order will execute at its stated limit price or better if the facilitating Electronic Access Member's contra-order, the solicited contra-side Complex Order, or the Counter-Side Order includes a short sale order. Thus, whether a short sale order included in an auction receives its stated limit price, or potentially receives a better price than its limit price, depends on whether the contra-side order submitted to the auction with an agency order also included a short sale order. Although the availability of the potential for price

improvement for the responder's short sale order will vary, depending on whether the contra-order also included a short sale order, ISE notes that for the reasons described below the alternative would be to exclude auction orders that include a short sale order from the Complex SOM, Complex Facilitation, and Complex PIM altogether, which would decrease competition in the auction and potentially reduce opportunities for the agency order to receive price improvement in the auctions. Below are some examples of Complex PIM Auction responses ("Improvement Orders") executing within a Complex PIM Auction.¹⁵

Example No. 1 – Complex PIM Auction utilizing stated limit price

ISE BBO for option leg is 0.05 x 0.10

Underlying equity NBBO is 1.05 x 1.10

Reg SHO short sale price test is triggered in the underlying

Stock-Option Strategy is created to buy 1 put, buy 100 shares (cBBO for this strategy is 1.10 x 1.20)

Complex PIM to buy strategy, 100 @ 1.13 (buy stock @ 1.08 and options @ 0.05)¹⁶; Counter-Side Order does not include a short sale order

Improvement Complex Order1 is a Priority Customer Order to sell, sell short stock leg, 100 @ 1.11 (sell stock @ 1.06 and options @ 0.05)

Improvement Complex Order2 to sell, sell short stock leg, 100 @ 1.12 (sell stock @ 1.07 and options @ 0.05)

Complex PIM auction timer concludes

¹⁵ While the examples utilize the Complex PIM auction, the same examples apply to a Complex SOM or Complex Facilitation auction.

¹⁶ The Exchange notes that different combinations of stock and options prices could determine the strategy prices in this Example 1 as well as Examples 2 and 3. The Exchange is assuming the noted prices for the examples, however the Exchange notes that multiple price points could achieve the net prices in these examples. In this particular case in Example 1, the agency order could buy stock @ 1.07 and buy options @ 0.06 in lieu of the prices noted.

Improvement Complex Order1 trades with Complex PIM Agency Order, option @ 0.05 and stock @ 1.06 for net price of 1.11. The Improvement Complex Order may not trade the underlying equity at 1.05 because it cannot execute a short sale order at a price that is equal to the NBB of the underlying equity.

Example No. 2 - Complex PIM Auction utilizing stated limit price

ISE BBO for option leg is 0.05 x 0.10

Underlying equity NBBO is 1.05 x 1.10

Reg SHO short sale price test is triggered in the underlying
Stock-Option Strategy is created to buy 1 put, buy 100 shares (cBBO for this strategy is 1.10 x 1.20)

Complex PIM to buy strategy, 100 @ 1.13 (buy stock @ 1.08 and options @ 0.05);
Counter-Side Order does not include a short sale order

Improvement Complex Order1 is a Priority Customer Order to sell, sell short stock leg,
100 @ 1.10 (sell stock @ 1.05 and options @ 0.05)

Improvement Complex Order2 to sell, sell short stock leg, 100 @ 1.12 (sell stock @ 1.06
and options @ 0.06)

Complex PIM auction timer concludes

Improvement Complex Order2 trades with Complex PIM Agency Order, option @ 0.06
and stock @ 1.06 for net price of 1.12. Since the Counter-Side Order does not include a
short sale order, Improvement Complex Order1 is considered for execution at its stated
limit price of 1.10; since it cannot trade at 1.10 due to Reg SHO, it does not trade with the
Complex PIM Agency Order.

Example No. 3 - Complex PIM Auction where Counter-Side is also short selling

ISE BBO for option leg is 0.05 x 0.10

Underlying equity NBBO is 1.05 x 1.20

Counter-Side Order includes a short sale order

Reg SHO short sale price test is triggered in the underlying

Stock-Option Strategy is created to buy 1 put, buy 100 shares (cBBO for this strategy is
1.10 x 1.30)

Complex PIM to Buy strategy, 100 @ 1.13, Counter-Side Order is a Market Order that is willing to auto-match at any price point within Reg SHO price restriction bound and has 'sell short' stock leg instructions and therefore cannot trade the stock component at any price less than or equal to the underlying best bid of \$1.05. In this example, if the Counter-Side Order did not have a "sell short" instruction it would not be required to trade at a price that is better than the NBB for security (\$1.05) and could execute at a price equal to or less than the underlying best bid of \$1.05. The price of 1.10 is the cBB (net of option and underlying NBB).

Improvement Complex Order1 is to sell, sell short stock leg, 100 @ 1.10 (selling stock at 1.05 and options at 0.05; note it cannot trade at 1.10 due to Reg SHO)

Improvement Complex Order2 to sell, sell short stock leg, 100 @ 1.12 (selling stock at 1.06 and options at 0.06)

Complex PIM auction timer concludes

The Complex PIM Agency Order first executes 40 contracts with the Counter-Side Market Order, the option leg at 0.05 and stock leg at 1.06 for a net price of 1.11. The remaining 60 contracts from the Complex Agency Order then execute with Improvement Complex Order1 at the same price. In this example, both the Complex Counter-Side Order and the Improvement Complex Order are marked short sale, which permits the Improvement Complex Order to trade at a price that is better than its stated limit price.

In this example, the Improvement Complex Order traded at its next available price in lieu of its stated limit price because both the Counter-Side Order and the Improvement Complex Order included a short sale order in the underlying component security. In contrast, if the Counter-Side Order did not include a short sale order than the Counter-Side Order and Improvement Complex Order2 trade with the Complex PIM Agency Order for net price of 1.12 (option @ 0.06 and stock @ 1.06).

The Exchange proposes to amend the rule text in Supplementary Material .08 to Options

3, Section 11 with respect to a SOM and Facilitation auction to provide:

When a response or an unrelated limit complex order on the complex order book includes a short sale order in the underlying covered security, NES will execute such order at (1) its stated limit price if the facilitating Electronic Access Member's contra order or contra-side solicited Complex Order does not include a short sale order in the underlying security; or (2) its stated limit price or better if the facilitating Electronic Access Member' contra order or the solicited contra-side Complex Order includes a short sale order in the underlying covered security.

With respect to a Complex PIM auction, the Exchange proposes to amend the rule text

within Supplementary Material .09 to Options 3, Section 13 to provide:

When an improvement order or an unrelated limit complex order on the complex order book includes a short sale order in the underlying covered security, NES will execute such order at (1) its stated limit price if the Counter-Side Order does not include a short sale order in the underlying security; or (2) its stated limit price or better if the counter-side order includes a short sale order in the underlying covered security.

In such case where a response or an unrelated limit complex order on the complex order book includes a short sale order in the underlying covered security, NES will execute the order at its stated limit price if the facilitating Electronic Access Member's contra order, contra-side solicited Complex Order, or Counter-Side Order **does not include a short sale order** in the underlying covered security because the Exchange desires to foster competition by including responses that have a short sale order in the underlying covered security. In this scenario, the Exchange would consider all prices submitted by responders at which the auction may execute because the Electronic Access Member's contra order, contra-side solicited Complex Order, or Counter-Side Order does not need to comply with the short sale price test in Rule 201 of Regulation SHO because the order is not short. By using the order's stated limit price in this case, the Exchange would allow the responder with a short sale order to participate in the auction and allocate the best price possible to the agency order while complying with the short sale price test.¹⁷

The Exchange believes that including responses with a short sale order in the underlying

¹⁷ For example, utilizing a Complex PIM auction with a BBO of 0.05 x 0.10 and an NBBO for the underlying security component of 1.05 x 1.10, if the Initiating Order submitted an agency order to buy @ 1.13 and a contra-order to sell @ 1.13, with auto-match at any price point, and Responder1 was long @ 1.10, and Responder2 was short @ 1.10 (in this scenario 1.10 would not comply with the short sale price test), pursuant to the proposed amendment, the agency order would receive a price improvement allocation @ 1.10. In this scenario the improved price of 1.11 would not be allocated to the responder with a short sale rather the price improvement would be applied to the agency order. The Exchange believes it is important to offer price improvement to the agency order over the responder to the auction. Of note, the responder that was short @ 1.10 would be cancelled.

covered security may create additional competition in the Complex SOM, Complex Facilitation and Complex PIM auction while also providing additional opportunity for potential price improvement for the agency order.

When a response, Improvement Order, or an unrelated limit complex order on the complex order book includes a short sale order in the underlying covered security, NES will execute the order at its stated limit price or better if the facilitating Electronic Access Member contra order, solicited contra-side Complex Order, or Counter-Side Order **includes a short sale order** in the underlying security component. In this case, each short sale compliant price would be considered in determining the price at which the auction may execute, which would be at its stated limit price or better. In this scenario, because the Electronic Access Member contra order, solicited contra-side Complex Order, or Counter-Side Order are short, the Exchange will only consider prices that comply with the short sale price test in Rule 201 of Regulation SHO. In this case, all prices that are compliant with the short sale price test are considered when allocating the auction, and both the agency order and responders may receive a better price. The auction would allocate at the agency order's stated limited price or better depending on the prices of the responses. The auction responses may execute at their stated limited price or better depending on the final auction price.

This is in contrast to the prior scenario where the Electronic Access Member's contra order, contra-side solicited Complex Order, or Counter-Side Order does not need to comply with the short sale price test. Utilizing the proposed stated limit price or better where a Member's contra order, contra-side solicited Complex Order, or Counter-Side Order includes a short sale order allows the Exchange to potentially provide price

improvement opportunity to the agency order.

Implementation

The Exchange intends to begin implementation of the proposed rule change prior to December 20, 2024. The implementation would commence with a limited symbol migration and continue to migrate symbols over several weeks. The Exchange will issue an Options Trader Alert to Members to provide notification of the symbols that will migrate and the relevant dates.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁹ in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest for the reasons discussed below.

With respect to short sale regulation, the proposed handling of the stock/ETF component of a Complex Order under this proposal does not raise any issues of compliance with the currently operative provisions of Regulation SHO²⁰ and, therefore, the proposal promotes just and equitable principles of trade. When a Complex Order has a stock/ETF component, Members must indicate, pursuant to Regulation SHO, whether that order involves a long or short sale. NES, as a trading center under Rule 201, will be compliant with the requirements of Regulation SHO. Of course, broker-dealers, including both NES and the Members submitting orders to ISE with a stock/ETF component, must comply with Regulation SHO. NES' compliance team updates, reviews

¹⁸ 15 U.S.C. 78f(b).

¹⁹ 15 U.S.C. 78f(b)(5).

²⁰ 17 CFR 242.200 *et seq.*

and monitors NES' policies and procedures including those pertaining to Regulation SHO on an annual basis.

In the case where a response, Improvement Order, or an unrelated limit complex order includes a short sale order in the underlying covered security, executing such order at its stated limit price when the facilitating Electronic Access Member's contra order, contra-side Complex Order, or Counter-Side Order **does not include a short sale** order in the underlying security would protect investors and the public interest by considering all prices at which the auction could execute. Under these circumstance, the Response, Improvement Complex Order, or unrelated Limit Complex Order would be considered for execution at its stated limit price (provided the limit price is compliant with the short sale price test in Rule 201 of Regulation SHO) while the Electronic Access Member's contra order, contra-side solicited Complex Order, or Counter-Side Order does not need to comply with the short sale price test in Rule 201 of Regulation SHO because the order is not short. Utilizing the order's stated limit price in this case allows the responder with a short sale order to participate in the auction while the agency order is allocated the best price possible while complying with the short sale price test. The Exchange believes that this behavior is consistent with the protection of investors and the public interest because it attempts to afford price improvement to the agency order over the responder to the auction. Finally, the Exchange believes that including responses with a short sale order in the underlying covered security may create additional competition in the Complex SOM, Complex Facilitation and Complex PIM auction and provides the agency order with additional opportunities for potential price improvement.

In contrast, when the facilitating Electronic Access Member's contra order, contra-side Complex Order, or Counter-Side Order **includes a short sale order** in the underlying covered security, the auction must be allocated at a price that is short sell compliant. In this case, each short sale compliant price would be considered in determining the price at which the Complex SOM, Complex Facilitation and Complex PIM auction may execute and, because the Electronic Access Member contra order, solicited contra-side Complex Order, or Counter-Side Order are short, the Exchange will only consider prices that comply with the short sale price test in Rule 201 of Regulation SHO. As a result, the auction may allocate at the agency order's stated limited price or better depending on the prices of the responses. Also, the auction responses may execute at their stated limited price or better depending on the final auction price. The Exchange believes its proposal is consistent with the Act and the protection of investors because both the agency order and responders may receive a better price in this case. This is in contrast to the prior scenario where the Electronic Access Member's contra order, contra-side solicited Complex Order, or Counter-Side Order does not need to comply with the short sale price test. Utilizing the proposed stated limit price or better where a Member's contra order, contra-side solicited Complex Order, or Counter-Side Order includes a short sale order allows the Exchange to potentially provide a price improvement opportunity to the agency order and to the auction response. With the proposed amendments, Complex SOM, Complex Facilitation, and Complex PIM auction responders who submit a response would be aware of the auction price that would comply with the short sale price test in Rule 201 of Regulation SHO. The proposed amendment allows Members to participate in auctions with a short sale response and such participation facilitates

competition in these auctions. This proposed approach is in lieu of prohibiting Members whose auction Responses or resting Limit Complex Orders include a short sale order from responding to these auctions, which would limit competition in the auction. By allowing additional responses to participate in the auction, the Exchange believes that the proposal would benefit investors and the public interest because the additional interest may increase competition in these auctions, which may lead to better prices.

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.

Where a response, Improvement Order, or an unrelated limit complex order includes a short sale order in the underlying covered security, executing such order at its stated limit price when the facilitating Electronic Access Member's contra order, contra-side Complex Order, or Counter-Side Order **does not include a short sale order** in the underlying covered security does not impose an undue burden on intra-market competition because the Exchange would uniformly consider all prices submitted by responders in determining the allocation price because the Electronic Access Member's contra order, contra-side solicited Complex Order, or Counter-Side Order does not need to comply with the short sale price test in Rule 201 of Regulation SHO because the order is not short. Where a response, Improvement Order, or an unrelated limit complex order includes a short sale order in the underlying covered security, executing such order at its stated limit price or better when the facilitating Electronic Access Member's contra order, contra-side Complex Order, or Counter-Side Order **is also a short sale order** in the underlying covered security component does not impose an undue burden on intra-market

competition because the Exchange would uniformly consider all prices that are compliant with the short sale price test when allocating the auction.

Where a response, Improvement Order, or an unrelated limit complex order includes a short sale order in the underlying covered security, executing such order at its stated limit price when the facilitating Electronic Access Member's contra order, contra-side Complex Order, or Counter-Side Order does not include a short sale order in the underlying covered security and executing such order its stated limit price or better when the facilitating Electronic Access Member contra-order, solicited contra-side Complex Order, or Counter-Side Order is also a short sale order in the underlying covered security component does not impose an undue burden on inter-market competition because other options exchanges today may offer a similar process for handling stock-tied transactions that have a short sale order.

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 Act²¹ and subparagraph (f)(6) of Rule 19b-4 thereunder.²²

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.

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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-ISE-2023-22 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.

²¹ 15 U.S.C. 78s(b)(3)(A)(iii).

²² 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.

All submissions should refer to file number SR-ISE-2023-22. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-ISE-2023-22 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²³

²³ 17 CFR 200.30-3(a)(12).

Sherry R. Haywood,

Assistant Secretary.

EXHIBIT 5

New text is underlined; deleted text is in brackets.

Nasdaq ISE, LLC Rules

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Options Rules

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Options 3 Options Trading Rules

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Section 11. Auction Mechanisms

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Supplementary Material to Options 3, Section 11

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.08 Complex Facilitation and Complex SOM Orders with stock/ETF components.

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(c) When the short sale price test in Rule 201 of Regulation SHO is triggered for a covered security, NES will not execute a short sale order in the underlying covered security component of a Complex Facilitation Order, Complex SOM Order and/or Response if the price is equal to or below the current national best bid. However, NES will execute a short sale order in the underlying covered security component of a Complex Facilitation Order, Complex SOM Order and/or Response if such order is marked “short exempt,” regardless of whether it is at a price that is equal to or below the current national best bid. When a response or an unrelated limit complex order on the complex order book includes a short sale order in the underlying covered security, NES will execute such order at (1) its stated limit price if the facilitating Electronic Access Member’s contra order or the contra-side solicited Complex Order does not include a short sale order in the underlying security; or (2) its stated limit price or better if the facilitating Electronic Access Member’ contra order or the solicited contra-side Complex Order includes a short sale order in the underlying covered security. If NES cannot execute the underlying covered security component of a Complex Facilitation Order, Complex SOM Order and/or Response in accordance with Rule 201 of Regulation SHO, the Exchange will cancel back the Complex Facilitation Order, Complex SOM Order and/or Response to the entering Member. For purposes of this paragraph, the term “covered security” shall have the same meaning as in Rule 201(a)(1) of Regulation SHO.

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Section 13. Price Improvement Mechanism for Crossing Transactions

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Supplementary Material to Options 3, Section 13

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.09 Complex PIM Orders with stock/ETF components.

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(c) When the short sale price test in Rule 201 of Regulation SHO is triggered for a covered security, NES will not execute a short sale order in the underlying covered security component of a Complex PIM Order and/or Improvement Order if the price is equal to or below the current national best bid. However, NES will execute a short sale order in the underlying covered security component of a Complex PIM Order and/or Improvement Order if such order is marked “short exempt,” regardless of whether it is at a price that is equal to or below the current national best bid. When an Improvement Order or an unrelated limit complex order on the complex order book includes a short sale order in the underlying covered security, NES will execute such order at (1) its stated limit price if the Counter-Side Order does not include a short sale order in the underlying security; or (2) its stated limit price or better if the Counter-Side Order includes a short sale order in the underlying covered security. If NES cannot execute the underlying covered security component of a Complex PIM Order and/or Improvement Order in accordance with Rule 201 of Regulation SHO, the Exchange will cancel back the Complex PIM Order and/or Improvement Order to the entering member. For purposes of this paragraph, the term “covered security” shall have the same meaning as in Rule 201(a)(1) of Regulation SHO.

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