

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of \* 39

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

File No. \* SR 2023 - \* 30

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		
			<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 \*).

A Proposal to Amend Options 4, Section 5 Related to a Low Priced Stock Strike Price Interval Program

### 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 11/20/2023


(Title \*)

By John A. Zecca

EVP and Chief Legal Counsel

(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: 2023.11.20 14:48:06 -05'00'

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-2023-30 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-2023-30 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**

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SR-ISE-2023-30 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”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to amend Options 4, Section 5, Series of Options Contracts Open for Trading.

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) The proposed rule change amends The Nasdaq Stock Market LLC (“Nasdaq”), Nasdaq Phlx LLC (“Phlx”), Nasdaq BX, Inc. (“BX”), Nasdaq GEMX, LLC (“GEMX”) and Nasdaq MRX, LLC (“MRX”) Options 4, Section 5. Nasdaq, Phlx, BX, GEMX and MRX incorporate ISE Options 4, Section 5 by reference.

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

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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

a. Purpose

The Exchange proposes to amend Options 4, Section 5, Series of Options Contracts Open for Trading. Miami International Securities Exchange, LLC (“MIAX”) recently received approval to amend its Rule 404 to implement a new strike interval program for stocks that are priced less than \$2.50 and have an average daily trading volume of at least 1,000,000 shares per day for the 3 preceding calendar months.<sup>3</sup> At this time, the Exchange proposes to adopt rules substantively identical to MIAX at new Supplementary Material .08 to Options 4, Section 5 and also amend Supplementary Material .07 to Options 4, Section 5 to harmonize the table to the proposed rule text.

Background

Currently, Options 4, Section 5, Series of Options Contracts Open for Trading, describes the process and procedures for listing and trading series of options<sup>4</sup> on the Exchange. Supplementary Material .02 to Options 4, Section 5 provides for a \$2.50 Strike Price Program, where the Exchange may select up to 60 option classes<sup>5</sup> on individual stocks for which the interval of strike prices will be \$2.50 where the strike price is greater than \$25.00 but less than \$50.00.<sup>6</sup> Supplementary Material .01 to Options 4, Section 5 also provides for a \$1 Strike Price Interval Program, where the interval

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<sup>3</sup> See Securities Exchange Act Release No. 98917 (November 13, 2023), 88 FR 80361 (November 17, 2023) (SR-MIAX-2023-36) (Order Approving a Proposed Rule Change To Amend Exchange Rule 404, Series of Option Contracts Open for Trading).

<sup>4</sup> The term “options contract” means a put or a call issued, or subject to issuance by the Clearing Corporation pursuant to the Rules of the Clearing Corporation. See Options 1, Section 1(a)(31).

<sup>5</sup> The terms “class of options” means all options contracts covering the same underlying security. See Options 1, Section 1(a)(8).

<sup>6</sup> See Supplementary Material .02 to Options 4, Section 5.

between strike prices of series of options<sup>7</sup> on individual stocks may be \$1.00 or greater provided the strike price is \$50.00 or less, but not less than \$1.00.<sup>8</sup> Additionally, Supplementary Material .05 to Options 4, Section 5 provides for a \$0.50 Strike Program.<sup>9</sup> The interval of strike prices of series of options on individual stocks may be \$0.50 or greater beginning at \$0.50 where the strike price is \$5.50 or less, but only for options classes whose underlying security closed at or below \$5.00 in its primary market on the previous trading day and which have national average daily volume that equals or exceeds 1,000 contracts per day as determined by The Options Clearing Corporation during the preceding three calendar months. The listing of \$0.50 strike prices is limited to options classes overlying no more than 20 individual stocks (the “\$0.50 Strike Program”) as specifically designated by the Exchange. The Exchange may list \$0.50 strike prices on any other option classes if those classes are specifically designated by other securities exchanges that employ a similar \$0.50 Strike Program under their respective rules. A stock shall remain in the \$0.50 Strike Program until otherwise designated by the Exchange.<sup>10</sup>

### Proposal

At this time, the Exchange proposes to adopt a new strike interval program for stocks that are not in the aforementioned \$0.50 Strike Program (or the Short Term Option Series Program)<sup>11</sup> and that close below \$2.50 and have an average daily trading volume

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<sup>7</sup> The term “series of options” means all options contracts of the same class having the same exercise price and expiration date. See Options 1, Section 1(a)(47).

<sup>8</sup> See Supplementary Material .01(a) to Options 4, Section 5.

<sup>9</sup> See Supplementary Material .05 to Options 4, Section 5.

<sup>10</sup> Id.

<sup>11</sup> See Supplementary Material .03 to Options 4, Section 5.

of at least 1,000,000 shares per day for the three (3) preceding calendar months. The \$0.50 Strike Program considers stocks that have a closing price at or below \$5.00 whereas the Exchange's proposal will consider stocks that have a closing price below \$2.50. Currently, there is a subset of stocks that are not included in the \$0.50 Strike Program as a result of the limitations of that program which provides that the listing of \$0.50 strike prices shall be limited to option classes overlying no more than 20 individual stocks as specifically designated by the Exchange and requires a national average daily volume that equals or exceeds 1,000 contracts per day as determined by The Options Clearing Corporation during the preceding three calendar months.<sup>12</sup> Therefore, the Exchange is proposing to implement a new strike interval program termed the "Low Priced Stock Strike Price Interval Program."

To be eligible for the inclusion in the Low Priced Stock Strike Price Interval Program, an underlying stock must (i) close below \$2.50 in its primary market on the previous trading day; and (ii) have an average daily trading volume of at least 1,000,000 shares per day for the three (3) preceding calendar months. The Exchange notes that there is no limit to the number of classes that will be eligible for inclusion in the proposed program, provided, of course, that the underlying stocks satisfy both the price and average daily trading volume requirements of the proposed program.

The Exchange also proposes that after a stock is added to the Low Priced Stock Strike Price Interval Program, the Exchange may list \$0.50 strike price intervals from \$0.50 up to \$2.00.<sup>13</sup> For the purpose of adding strikes under the Low Priced Stock Strike

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<sup>12</sup> See Supplementary Material .05 to Options 4, Section 5.

<sup>13</sup> While the Exchange may list new strikes on underlying stocks that meet the eligibility requirements of the new program the Exchange will exercise its discretion and will not list strikes

Price Interval Program, the “price of the underlying stock” shall be measured in the same way as “the price of the underlying security” as set forth in Options 4, Section 6(b)(i).<sup>14</sup> Further, no additional series in \$0.50 intervals may be listed if the underlying stock closes at or above \$2.50 in its primary market. Additional series in \$0.50 intervals may not be added until the underlying stock again closes below \$2.50.

The Exchange’s proposal addresses a gap in strike coverage for low priced stocks. The \$0.50 Strike Program considers stocks that close below \$5.00 and limits the number of option classes listed to no more than 20 individual stocks (provided that the open interest criteria is also satisfied). Whereas, the Exchange’s proposal has a narrower focus, with respect to the underlying’s stock price, and is targeted on those stocks that close below \$2.50 and does not limit the number of stocks that may participate in the program ((provided that the average daily trading volume is also satisfied). The Exchange does not believe that any market disruptions will be encountered with the addition of these new strikes. The Exchange represents that it has the necessary capacity and surveillance programs in place to support and properly monitor trading in the proposed Low Priced Stock Strike Price Interval Program.

The Exchange believes that its average daily trading volume requirement of 1,000,000 shares is a reasonable threshold to ensure adequate liquidity in eligible underlying stocks as it is substantially greater than the thresholds used for listing options on equities, American Depository Receipts, and broad-based indexes. Specifically, underlying securities with respect to which put or call option contracts are approved for

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on underlying stocks the Exchange believes are subject to imminent delisting from their primary exchange.

<sup>14</sup> The Exchange notes this is the same methodology used in the \$1 Strike Price Interval Program. See Supplementary Material .01(b)(3) of Options 4, Section 5.

listing and trading on the Exchange must meet certain criteria as determined by the Exchange. One of those requirements is that trading volume (in all markets in which the underlying security is traded) has been at least 2,400,000 shares in the preceding twelve (12) months.<sup>15</sup> Options 4, Section 3(f) provides the criteria for listing options on American Depositary Receipts (“ADRs”) if they meet certain criteria and guidelines set forth in Options 4, Section 3. One of the requirements is that the average daily trading volume for the security in the U.S. markets over the three (3) months preceding the selection of the ADR for options trading is 100,000 or more shares.<sup>16</sup> Finally, the Exchange may trade options on a broad-based index pursuant to Rule 19b-4(e) of the Act provided a number of conditions are satisfied. One of those conditions is that each component security that accounts for at least one percent (1%) of the weight of the index has an average daily trading volume of at least 90,000 shares during the last six month period.<sup>17</sup>

Additionally, the Exchange proposes to amend the table in Supplementary Material .07 of Options 4, Section 5 to insert a new column to harmonize the Exchange’s proposal to the strike intervals for Short Term Options Series as described in Supplementary Material .03 to Options 4, Section 5. The table in Supplementary Material .03 is intended to limit the intervals between strikes for multiply listed equity options within the Short Term Options Series program that have an expiration date more than twenty-one days from the listing date. Specifically, the table defines the applicable strike intervals for options on underlying stocks given the closing price on the primary

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<sup>15</sup> See Options 4, Section 3(b)(4).

<sup>16</sup> See Options 4, Section 3(f)(3)(ii).

<sup>17</sup> See Options 4A, Section 3(d)(7).



market on the last day of the calendar quarter, and a corresponding average daily volume of the total number of options contracts traded in a given security for the applicable calendar quarter divided by the number of trading days in the applicable calendar quarter.<sup>18</sup> However, the lowest share price column is titled “less than \$25.” The Exchange now proposes to insert a column titled “Less than \$2.50” and to set the strike interval at \$0.50 for each average daily volume tier represented in the table. Also, the Exchange proposes to amend the heading of the column currently titled “less than \$25,” to “\$2.50 to less than \$25” as a result of the adoption of the new proposed column, “Less than \$2.50.” The Exchange believes this change will remove any potential conflict between the strike intervals under the Short Term Options Series Program and those described herein under the Exchange’s proposal.

#### Impact of Proposal

The Exchange recognizes that its proposal will introduce new strikes in the marketplace and further acknowledges that there has been significant effort undertaken by the industry to curb strike proliferation. This initiative has been spearheaded by Nasdaq BX, Inc. (“BX”) when it filed an initial proposal focused on the removal, and prevention of the listing, of strikes which are extraneous and do not add value to the marketplace (the “Strike Interval Proposal”).<sup>19</sup> The Strike Interval Proposal was intended to remove repetitive and unnecessary strike listings across the weekly expiries.

Specifically, the Strike Interval Proposal aimed to reduce the density of strike intervals

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<sup>18</sup> See Securities Exchange Release Act No. 91125 (February 21, 2021), 86 FR 10375 (February 19, 2021) (SR-BX-2020-032) (Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Amend Options 4, Section 5, To Limit Short Term Options Series Intervals Between Strikes That Are Available for Quoting and Trading on BX) (“BX-2020-032”).

<sup>19</sup> See BX-2020-032. See also <https://www.nasdaq.com/solutions/bx-options-strike-proliferation-proposal>.

that would be listed in the later weeks, by creating limitations for intervals between strikes which have an expiration date more than twenty-one days from the listing date.<sup>20</sup> The Strike Interval Proposal took into account OCC customer-cleared volume, using it as an appropriate proxy for demand. The Strike Interval Proposal was designed to maintain strikes where there was customer demand and eliminate strikes where there was not demand. At the time of its proposal, BX estimated that the Strike Interval Proposal would reduce the number of listed strikes in the options market by approximately 81,000 strikes.<sup>21</sup> The Exchange proposes to amend the table to define the strike interval at \$0.50 for underlying stocks with a share price of less than \$2.50. The Exchange believes this amendment will harmonize the Exchange's proposal with the Strike Interval Proposal described above.

The Exchange recognizes that its proposal will moderately increase the total number of option series available on the Exchange. However, the Exchange's proposal is designed to only add strikes where there is investor demand<sup>22</sup> which will improve market quality. Under the requirements for the Low Priced Stock Strike Price Interval Program as described herein, MIAX determined that as of August 9, 2023, 106 symbols met the proposed criteria. Of those symbols, MIAX noted that 36 are currently in the \$1 Strike Price Interval Program with \$1.00 and \$2.00 strikes listed. Under the Exchange's proposal, the \$0.50 and \$1.50 strikes for these symbols would be added for the current expiration terms. Similar to MIAX, the remaining 70 symbols eligible under the proposal

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<sup>20</sup> See BX-2020-032.

<sup>21</sup> See BX-2020-032.

<sup>22</sup> See proposed Supplementary Material .08(a) of Options 4, Section 5 that requires that an underlying stock must (i) close below \$2.50 in its primary market on the previous trading day; and (ii) have an average daily trading volume of at least 1,000,000 shares per day for the three (3) preceding calendar months.

would have \$0.50, \$1.00, \$1.50 and \$2.00 strikes added to their current expiration terms. Therefore, MIAX noted that for the 106 symbols eligible for the Low Priced Stock Strike Price Interval Program, a total of approximately 3,250 options would be added. As of August 9, 2023, MIAX noted it listed 1,106,550 options, and therefore, the additional options that would be listed under this proposal would represent a relatively minor increase of 0.294% in the number of options listed.

The Exchange does not believe that its proposal contravenes the industry's efforts to curtail unnecessary strikes. The Exchange's proposal is targeted to only underlying stocks that close at less than \$2.50 and that also meet the average daily trading volume requirement. Additionally, because the strike increment is \$0.50 there are only a total of four strikes that may be listed under the program (\$0.50, \$1.00, \$1.50, and \$2.00) for an eligible underlying stock. Finally, if an eligible underlying stock is in another program (e.g., the \$0.50 Strike Program or the \$1 Strike Price Interval Program) the number of strikes that may be added is further reduced if there are pre-existing strikes as part of another strike listing program. Therefore, the Exchange does not believe that it will list any unnecessary or repetitive strikes as part of its program, and that the strikes that will be listed will improve market quality and satisfy investor demand.

The Exchange further believes that the Options Price Reporting Authority ("OPRA"), has the necessary systems capacity to handle any additional messaging traffic associated with this proposed rule change. The Exchange also believes that Members will not have a capacity issue as a result of the proposed rule change. Finally, the Exchange believes that the additional options will serve to increase liquidity, provide additional trading and hedging opportunities for all market participants, and improve market quality.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>23</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>24</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section (6)(b)(5)<sup>25</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes its proposal promotes just and equitable principles of trade and removes impediments to and perfects the mechanisms of a free and open market and a national market system as the Exchange has identified a subset of stocks that are trading under \$2.50 and do not have meaningful strikes available. For example, on August 9, 2023, symbol SOND closed at \$0.50 and had open interest of over 44,000 contracts and an average daily trading volume in the underlying stock of over 1,900,000 shares for the three preceding calendar months.<sup>26</sup> Currently the lowest strike listed is for \$2.50, making the lowest strike 400% away from the closing stock price. Another symbol, CTXR,

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<sup>23</sup> 15 U.S.C. 78f(b).

<sup>24</sup> 15 U.S.C. 78f(b)(5).

<sup>25</sup> 15 U.S.C. 78(f)(b)(5).

<sup>26</sup> See Yahoo! Finance, <https://finance.yahoo.com/quote/SOND/history?p=SOND> (last visited August 10, 2023).

closed at \$0.92 on August 9, 2023, and had open interest of 63,000 contracts and an average daily trading volume in the underlying stock of over 1,900,000 shares for the three preceding calendar months.<sup>27</sup> Similarly, the lowest strike listed is for \$2.50, making the lowest strike more than 170% away from the closing stock price. Currently, such products have no at-the-money options, as well as no in-the-money calls or out-of-the-money puts. The Exchange's proposal will provide additional strikes in \$0.50 increments from \$0.50 up to \$2.00 to provide more meaningful trading and hedging opportunities for this subset of stocks. Given the increased granularity of strikes as proposed under the Exchange's proposal out-of-the-money puts and in-the-money calls will be created. The Exchange believes this will allow market participants to tailor their investment and hedging needs more effectively.

The Exchange believes its proposal promotes just and equitable principles of trade and removes impediments to and perfects the mechanisms of a free and open market and a national market system and, in general, protects investors and the public interest by adding strikes that improves market quality and satisfies investor demand. The Exchange does not believe that the number of strikes that will be added under the program will negatively impact the market. Additionally, the proposal does not run counter to the efforts undertaken by the industry to curb strike proliferation as that effort focused on the removal and prevention of extraneous strikes where there was no investor demand. The Exchange's proposal requires the satisfaction of an average daily trading volume threshold in addition to the underlying stock closing at a price below \$2.50 to be eligible for the program. The Exchange believes that the average daily trading volume threshold

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<sup>27</sup> See Yahoo! Finance, <https://finance.yahoo.com/quote/CTXR/history?p=CTXR> (last visited August 10, 2023).

of the program ensures that only strikes with investor demand will be listed and fills a gap in strike interval coverage as described above. Further, being that the strike interval is \$0.50, there are only a maximum of four strikes that may be added (\$0.50, \$1.00, \$1.50, and \$2.00). Therefore, the Exchange does not believe that its proposal will undermine the industry's efforts to eliminate repetitive and unnecessary strikes in any fashion.

The Exchange believes that its average daily trading volume threshold promotes just and equitable principles of trade and removes impediments to and perfects the mechanisms of a free and open market and a national market system and, in general, protects investors and the public interest as it is designed to permit only those stocks with demonstrably high levels of trading activity to participate in the program. The Exchange notes that its average daily trading volume requirement is substantially greater than the average daily trading requirement currently in place on the Exchange for options on equity underlyings,<sup>28</sup> ADRs,<sup>29</sup> and broad-based indexes.<sup>30</sup>

The Exchange believes that the proposed rule change is consistent with Section 6(b)(1) of the Act, which provides that the Exchange be organized and have the capacity to be able to carry out the purposes of the Act and the rules and regulations thereunder, and the rules of the Exchange. The proposed rule change allows the Exchange to respond to customer demand to provide meaningful strikes for low priced stocks. The Exchange does not believe that the proposed rule would create any capacity issue or negatively affect market functionality. Additionally, the Exchange represents that it has the

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<sup>28</sup> See supra note 15.

<sup>29</sup> See supra note 16.

<sup>30</sup> See supra note 17.

necessary systems capacity to support the new options series and handle additional messaging traffic associated with this proposed rule change. The Exchange also believes that its Members will not experience any capacity issues as a result of this proposal. In addition, the Exchange represents that it believes that additional strikes for low priced stocks will serve to increase liquidity available as well as improve price efficiency by providing more trading opportunities for all market participants. The Exchange believes that the proposed rule change will benefit investors by giving them increased opportunities to execute their investment and hedging decisions.

Finally, the Exchange believes its proposal is designed to prevent fraudulent and manipulative acts and practices as options may only be listed on underlyings that satisfy the listing requirements of the Exchange as described in Options 4, Section 3, Criteria for Underlying Securities. Specifically, Options 4, Section 3 requires that underlying securities for which put or call option contracts are approved for listing and trading on the Exchange must meet the following criteria: (1) the security must be registered and be an “NMS stock” as defined in Rule 600 of Regulation NMS under the Exchange Act; (2) the security shall be characterized by a substantial number of outstanding shares that are widely held and actively traded.<sup>31</sup> Additionally, Options 4, Section 3 provides that absent exceptional circumstances, an underlying security will not be selected for options transactions unless: (1) there are a minimum of seven (7) million shares of the underlying security which are owned by persons other than those required to report their stock holdings under Section 16(a) of the Exchange Act; (2) there are a minimum of 2,000 holders of the underlying security; (3) the issuer is in compliance with any applicable

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<sup>31</sup> See Options 4, Section 3(a)(1) and (2).

requirements of the Exchange Act; and (4) trading volume (in all markets in which the underlying security is traded) has been at least 2,400,000 shares in the preceding twelve (12) months.<sup>32</sup> The Exchange's proposal does not impact the eligibility of an underlying stock to have options listed on it, but rather addresses only the listing of new additional option classes on an underlying listed on the Exchange in accordance to the Exchange's listings rules. As such, the Exchange believes that the listing requirements described in Options 4, Section 3 address potential concerns regarding possible manipulation. Additionally, in conjunction with the proposed average daily volume requirement described herein, the Exchange believes any possible market manipulation is further mitigated.

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

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

The Exchange does not believe that its proposed rule change will impose any burden on intra-market competition as the Rules of the Exchange apply equally to all Members of the Exchange and all Members may trade the new proposed strikes if they so choose. Specifically, the Exchange believes that investors and market participants will significantly benefit from the availability of finer strike price intervals for stocks priced below \$2.50, which will allow them to tailor their investment and hedging needs more effectively. The Exchange's proposal is substantively identical to MIAX Interpretations and Policies .11 and .12 to Rule 404.

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<sup>32</sup> See Options 4, Section 3(b)(1), (2), (3) and (4).



The Exchange does not believe that its proposed rule change will impose any burden on inter-market competition, as nothing prevents other options exchanges from proposing similar rules to list and trade options on low priced stocks. Rather the Exchange believes that its proposal will promote inter-market competition, as the Exchange's proposal will result in additional opportunities for investors to achieve their investment and trading objectives, to the benefit of investors, market participants, and the marketplace in general.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Members, 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)<sup>33</sup> of the Act and Rule 19b-4(f)(6) thereunder<sup>34</sup> 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.

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<sup>33</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>34</sup> 17 CFR 240.19b-4(f)(6).

The proposal does not significantly affect the protection of investors or the public interest, rather the proposal will provide additional strikes in \$0.50 increments from \$0.50 up to \$2.00 thereby provide more meaningful trading and hedging opportunities for this subset of stocks. Given the increased granularity of strikes as proposed under the Exchange's proposal out-of-the-money puts and in-the-money calls will be created. The Exchange believes this will allow market participants to tailor their investment and hedging needs more effectively. The Exchange proposes to add strikes that improve market quality and satisfies investor demand and does not believe that the number of strikes that will be added under the program will negatively impact the market. The Exchange believes that the average daily trading volume threshold of the program ensures that only strikes with investor demand will be listed and fills a gap in strike interval coverage. Further, as the strike interval is \$0.50, there are only a maximum of four strikes that may be added (\$0.50, \$1.00, \$1.50, and \$2.00). Therefore, the Exchange does not believe that its proposal will undermine the industry's efforts to eliminate repetitive and unnecessary strikes in any fashion. The proposal will allow the Exchange to respond to customer demand to provide meaningful strikes for low priced stocks. The Exchange does not believe that the proposed rule would create any capacity issue or negatively affect market functionality. Finally, the additional options will serve to increase liquidity, provide additional trading and hedging opportunities for all market participants, and improve market quality. The proposal is not novel and is similar to MIAX's amendment to Rule 404 in all material respects.<sup>35</sup>

The Exchange does not believe that its proposed rule change will impose any

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<sup>35</sup> See supra note 3.

significant burden on competition as the proposal would apply equally to all Members and all Members may trade the new proposed strikes if they so choose. Specifically, the Exchange believes that investors and market participants will significantly benefit from the availability of finer strike price intervals for stocks priced below \$2.50, which will allow them to tailor their investment and hedging needs more effectively.

Furthermore, Rule 19b-4(f)(6)(iii)<sup>36</sup> 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.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. Rule 19b-4(f)(6)(iii), however, permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that it may adopt a new strike interval program for stocks that are priced less than \$2.50 and have an average daily trading volume of at least 1,000,000 shares per day for the three (3) preceding calendar months substantively

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<sup>36</sup> 17 CFR 240.19b-4(f)(6)(iii).

identical to MIAX. The ability to list options similar to MIAX will allow the Exchange to effectively compete with MIAX and other markets that also elect to adopt the listing program.

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

The proposed rule change is substantively identical to MIAX Interpretations and Policies .11 and .12 to Rule 404.<sup>37</sup>

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.

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<sup>37</sup> See supra note 3.

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_ ; File No. SR-ISE-2023-30)

November \_\_, 2023

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Options 4, Section 5 Related to a Low Priced Stock Strike Price Interval Program

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 20, 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 4, Section 5, Series of Options Contracts Open for Trading.

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

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 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

The Exchange proposes to amend Options 4, Section 5, Series of Options Contracts Open for Trading. Miami International Securities Exchange, LLC ("MIAX") recently received approval to amend its Rule 404 to implement a new strike interval program for stocks that are priced less than \$2.50 and have an average daily trading volume of at least 1,000,000 shares per day for the 3 preceding calendar months.<sup>3</sup> At this time, the Exchange proposes to adopt rules substantively identical to MIAX at new Supplementary Material .08 to Options 4, Section 5 and also amend Supplementary Material .07 to Options 4, Section 5 to harmonize the table to the proposed rule text.

Background

Currently, Options 4, Section 5, Series of Options Contracts Open for Trading, describes the process and procedures for listing and trading series of options<sup>4</sup> on the Exchange. Supplementary Material .02 to Options 4, Section 5 provides for a \$2.50 Strike Price Program, where the Exchange may select up to 60 option classes<sup>5</sup> on individual stocks for which the interval of strike prices will be \$2.50 where the strike

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<sup>3</sup> See Securities Exchange Act Release No. 98917 (November 13, 2023), 88 FR 80361 (November 17, 2023) (SR-MIAX-2023-36) (Order Approving a Proposed Rule Change To Amend Exchange Rule 404, Series of Option Contracts Open for Trading).

<sup>4</sup> The term "options contract" means a put or a call issued, or subject to issuance by the Clearing Corporation pursuant to the Rules of the Clearing Corporation. See Options 1, Section 1(a)(31).

<sup>5</sup> The terms "class of options" means all options contracts covering the same underlying security. See Options 1, Section 1(a)(8).

price is greater than \$25.00 but less than \$50.00.<sup>6</sup> Supplementary Material .01 to Options 4, Section 5 also provides for a \$1 Strike Price Interval Program, where the interval between strike prices of series of options<sup>7</sup> on individual stocks may be \$1.00 or greater provided the strike price is \$50.00 or less, but not less than \$1.00.<sup>8</sup> Additionally, Supplementary Material .05 to Options 4, Section 5 provides for a \$0.50 Strike Program.<sup>9</sup> The interval of strike prices of series of options on individual stocks may be \$0.50 or greater beginning at \$0.50 where the strike price is \$5.50 or less, but only for options classes whose underlying security closed at or below \$5.00 in its primary market on the previous trading day and which have national average daily volume that equals or exceeds 1,000 contracts per day as determined by The Options Clearing Corporation during the preceding three calendar months. The listing of \$0.50 strike prices is limited to options classes overlying no more than 20 individual stocks (the “\$0.50 Strike Program”) as specifically designated by the Exchange. The Exchange may list \$0.50 strike prices on any other option classes if those classes are specifically designated by other securities exchanges that employ a similar \$0.50 Strike Program under their respective rules. A stock shall remain in the \$0.50 Strike Program until otherwise designated by the Exchange.<sup>10</sup>

### Proposal

At this time, the Exchange proposes to adopt a new strike interval program for

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<sup>6</sup> See Supplementary Material .02 to Options 4, Section 5.

<sup>7</sup> The term “series of options” means all options contracts of the same class having the same exercise price and expiration date. See Options 1, Section 1(a)(47).

<sup>8</sup> See Supplementary Material .01(a) to Options 4, Section 5.

<sup>9</sup> See Supplementary Material .05 to Options 4, Section 5.

<sup>10</sup> Id.

stocks that are not in the aforementioned \$0.50 Strike Program (or the Short Term Option Series Program)<sup>11</sup> and that close below \$2.50 and have an average daily trading volume of at least 1,000,000 shares per day for the three (3) preceding calendar months. The \$0.50 Strike Program considers stocks that have a closing price at or below \$5.00 whereas the Exchange's proposal will consider stocks that have a closing price below \$2.50. Currently, there is a subset of stocks that are not included in the \$0.50 Strike Program as a result of the limitations of that program which provides that the listing of \$0.50 strike prices shall be limited to option classes overlying no more than 20 individual stocks as specifically designated by the Exchange and requires a national average daily volume that equals or exceeds 1,000 contracts per day as determined by The Options Clearing Corporation during the preceding three calendar months.<sup>12</sup> Therefore, the Exchange is proposing to implement a new strike interval program termed the "Low Priced Stock Strike Price Interval Program."

To be eligible for the inclusion in the Low Priced Stock Strike Price Interval Program, an underlying stock must (i) close below \$2.50 in its primary market on the previous trading day; and (ii) have an average daily trading volume of at least 1,000,000 shares per day for the three (3) preceding calendar months. The Exchange notes that there is no limit to the number of classes that will be eligible for inclusion in the proposed program, provided, of course, that the underlying stocks satisfy both the price and average daily trading volume requirements of the proposed program.

The Exchange also proposes that after a stock is added to the Low Priced Stock Strike Price Interval Program, the Exchange may list \$0.50 strike price intervals from

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<sup>11</sup> See Supplementary Material .03 to Options 4, Section 5.

<sup>12</sup> See Supplementary Material .05 to Options 4, Section 5.



\$0.50 up to \$2.00.<sup>13</sup> For the purpose of adding strikes under the Low Priced Stock Strike Price Interval Program, the “price of the underlying stock” shall be measured in the same way as “the price of the underlying security” as set forth in Options 4, Section 6(b)(i).<sup>14</sup> Further, no additional series in \$0.50 intervals may be listed if the underlying stock closes at or above \$2.50 in its primary market. Additional series in \$0.50 intervals may not be added until the underlying stock again closes below \$2.50.

The Exchange’s proposal addresses a gap in strike coverage for low priced stocks. The \$0.50 Strike Program considers stocks that close below \$5.00 and limits the number of option classes listed to no more than 20 individual stocks (provided that the open interest criteria is also satisfied). Whereas, the Exchange’s proposal has a narrower focus, with respect to the underlying’s stock price, and is targeted on those stocks that close below \$2.50 and does not limit the number of stocks that may participate in the program ((provided that the average daily trading volume is also satisfied). The Exchange does not believe that any market disruptions will be encountered with the addition of these new strikes. The Exchange represents that it has the necessary capacity and surveillance programs in place to support and properly monitor trading in the proposed Low Priced Stock Strike Price Interval Program.

The Exchange believes that its average daily trading volume requirement of 1,000,000 shares is a reasonable threshold to ensure adequate liquidity in eligible underlying stocks as it is substantially greater than the thresholds used for listing options

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<sup>13</sup> While the Exchange may list new strikes on underlying stocks that meet the eligibility requirements of the new program the Exchange will exercise its discretion and will not list strikes on underlying stocks the Exchange believes are subject to imminent delisting from their primary exchange.

<sup>14</sup> The Exchange notes this is the same methodology used in the \$1 Strike Price Interval Program. See Supplementary Material .01(b)(3) of Options 4, Section 5.

on equities, American Depositary Receipts, and broad-based indexes. Specifically, underlying securities with respect to which put or call option contracts are approved for listing and trading on the Exchange must meet certain criteria as determined by the Exchange. One of those requirements is that trading volume (in all markets in which the underlying security is traded) has been at least 2,400,000 shares in the preceding twelve (12) months.<sup>15</sup> Options 4, Section 3(f) provides the criteria for listing options on American Depositary Receipts (“ADRs”) if they meet certain criteria and guidelines set forth in Options 4, Section 3. One of the requirements is that the average daily trading volume for the security in the U.S. markets over the three (3) months preceding the selection of the ADR for options trading is 100,000 or more shares.<sup>16</sup> Finally, the Exchange may trade options on a broad-based index pursuant to Rule 19b-4(e) of the Act provided a number of conditions are satisfied. One of those conditions is that each component security that accounts for at least one percent (1%) of the weight of the index has an average daily trading volume of at least 90,000 shares during the last six month period.<sup>17</sup>

Additionally, the Exchange proposes to amend the table in Supplementary Material .07 of Options 4, Section 5 to insert a new column to harmonize the Exchange’s proposal to the strike intervals for Short Term Options Series as described in Supplementary Material .03 to Options 4, Section 5. The table in Supplementary Material .03 is intended to limit the intervals between strikes for multiply listed equity options within the Short Term Options Series program that have an expiration date more

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<sup>15</sup> See Options 4, Section 3(b)(4).

<sup>16</sup> See Options 4, Section 3(f)(3)(ii).

<sup>17</sup> See Options 4A, Section 3(d)(7).

than twenty-one days from the listing date. Specifically, the table defines the applicable strike intervals for options on underlying stocks given the closing price on the primary market on the last day of the calendar quarter, and a corresponding average daily volume of the total number of options contracts traded in a given security for the applicable calendar quarter divided by the number of trading days in the applicable calendar quarter.<sup>18</sup> However, the lowest share price column is titled “less than \$25.” The Exchange now proposes to insert a column titled “Less than \$2.50” and to set the strike interval at \$0.50 for each average daily volume tier represented in the table. Also, the Exchange proposes to amend the heading of the column currently titled “less than \$25,” to “\$2.50 to less than \$25” as a result of the adoption of the new proposed column, “Less than \$2.50.” The Exchange believes this change will remove any potential conflict between the strike intervals under the Short Term Options Series Program and those described herein under the Exchange’s proposal.

#### Impact of Proposal

The Exchange recognizes that its proposal will introduce new strikes in the marketplace and further acknowledges that there has been significant effort undertaken by the industry to curb strike proliferation. This initiative has been spearheaded by Nasdaq BX, Inc. (“BX”) when it filed an initial proposal focused on the removal, and prevention of the listing, of strikes which are extraneous and do not add value to the

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<sup>18</sup> See Securities Exchange Release Act No. 91125 (February 21, 2021), 86 FR 10375 (February 19, 2021) (SR-BX-2020-032) (Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Amend Options 4, Section 5, To Limit Short Term Options Series Intervals Between Strikes That Are Available for Quoting and Trading on BX) (“BX-2020-032”).

marketplace (the “Strike Interval Proposal”).<sup>19</sup> The Strike Interval Proposal was intended to remove repetitive and unnecessary strike listings across the weekly expiries.

Specifically, the Strike Interval Proposal aimed to reduce the density of strike intervals that would be listed in the later weeks, by creating limitations for intervals between strikes which have an expiration date more than twenty-one days from the listing date.<sup>20</sup>

The Strike Interval Proposal took into account OCC customer-cleared volume, using it as an appropriate proxy for demand. The Strike Interval Proposal was designed to maintain strikes where there was customer demand and eliminate strikes where there was not demand. At the time of its proposal, BX estimated that the Strike Interval Proposal would reduce the number of listed strikes in the options market by approximately 81,000 strikes.<sup>21</sup> The Exchange proposes to amend the table to define the strike interval at \$0.50 for underlying stocks with a share price of less than \$2.50. The Exchange believes this amendment will harmonize the Exchange’s proposal with the Strike Interval Proposal described above.

The Exchange recognizes that its proposal will moderately increase the total number of option series available on the Exchange. However, the Exchange’s proposal is designed to only add strikes where there is investor demand<sup>22</sup> which will improve market quality. Under the requirements for the Low Priced Stock Strike Price Interval Program as described herein, MIAX determined that as of August 9, 2023, 106 symbols met the

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<sup>19</sup> See BX-2020-032. See also <https://www.nasdaq.com/solutions/bx-options-strike-proliferation-proposal>).

<sup>20</sup> See BX-2020-032.

<sup>21</sup> See BX-2020-032.

<sup>22</sup> See proposed Supplementary Material .08(a) of Options 4, Section 5 that requires that an underlying stock must (i) close below \$2.50 in its primary market on the previous trading day; and (ii) have an average daily trading volume of at least 1,000,000 shares per day for the three (3) preceding calendar months.

proposed criteria. Of those symbols, MIAX noted that 36 are currently in the \$1 Strike Price Interval Program with \$1.00 and \$2.00 strikes listed. Under the Exchange's proposal, the \$0.50 and \$1.50 strikes for these symbols would be added for the current expiration terms. Similar to MIAX, the remaining 70 symbols eligible under the proposal would have \$0.50, \$1.00, \$1.50 and \$2.00 strikes added to their current expiration terms. Therefore, MIAX noted that for the 106 symbols eligible for the Low Priced Stock Strike Price Interval Program, a total of approximately 3,250 options would be added. As of August 9, 2023, MIAX noted it listed 1,106,550 options, and therefore, the additional options that would be listed under this proposal would represent a relatively minor increase of 0.294% in the number of options listed.

The Exchange does not believe that its proposal contravenes the industry's efforts to curtail unnecessary strikes. The Exchange's proposal is targeted to only underlying stocks that close at less than \$2.50 and that also meet the average daily trading volume requirement. Additionally, because the strike increment is \$0.50 there are only a total of four strikes that may be listed under the program (\$0.50, \$1.00, \$1.50, and \$2.00) for an eligible underlying stock. Finally, if an eligible underlying stock is in another program (e.g., the \$0.50 Strike Program or the \$1 Strike Price Interval Program) the number of strikes that may be added is further reduced if there are pre-existing strikes as part of another strike listing program. Therefore, the Exchange does not believe that it will list any unnecessary or repetitive strikes as part of its program, and that the strikes that will be listed will improve market quality and satisfy investor demand.

The Exchange further believes that the Options Price Reporting Authority ("OPRA"), has the necessary systems capacity to handle any additional messaging traffic

associated with this proposed rule change. The Exchange also believes that Members will not have a capacity issue as a result of the proposed rule change. Finally, the Exchange believes that the additional options will serve to increase liquidity, provide additional trading and hedging opportunities for all market participants, and improve market quality.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>23</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>24</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section (6)(b)(5)<sup>25</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes its proposal promotes just and equitable principles of trade and removes impediments to and perfects the mechanisms of a free and open market and a national market system as the Exchange has identified a subset of stocks that are trading under \$2.50 and do not have meaningful strikes available. For example, on August 9, 2023, symbol SOND closed at \$0.50 and had open interest of over 44,000 contracts and

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<sup>23</sup> 15 U.S.C. 78f(b).

<sup>24</sup> 15 U.S.C. 78f(b)(5).

<sup>25</sup> 15 U.S.C. 78(f)(b)(5).

an average daily trading volume in the underlying stock of over 1,900,000 shares for the three preceding calendar months.<sup>26</sup> Currently the lowest strike listed is for \$2.50, making the lowest strike 400% away from the closing stock price. Another symbol, CTXR, closed at \$0.92 on August 9, 2023, and had open interest of 63,000 contracts and an average daily trading volume in the underlying stock of over 1,900,000 shares for the three preceding calendar months.<sup>27</sup> Similarly, the lowest strike listed is for \$2.50, making the lowest strike more than 170% away from the closing stock price. Currently, such products have no at-the-money options, as well as no in-the-money calls or out-of-the-money puts. The Exchange's proposal will provide additional strikes in \$0.50 increments from \$0.50 up to \$2.00 to provide more meaningful trading and hedging opportunities for this subset of stocks. Given the increased granularity of strikes as proposed under the Exchange's proposal out-of-the-money puts and in-the-money calls will be created. The Exchange believes this will allow market participants to tailor their investment and hedging needs more effectively.

The Exchange believes its proposal promotes just and equitable principles of trade and removes impediments to and perfects the mechanisms of a free and open market and a national market system and, in general, protects investors and the public interest by adding strikes that improves market quality and satisfies investor demand. The Exchange does not believe that the number of strikes that will be added under the program will negatively impact the market. Additionally, the proposal does not run counter to the efforts undertaken by the industry to curb strike proliferation as that effort focused on the

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<sup>26</sup> See Yahoo! Finance, <https://finance.yahoo.com/quote/SOND/history?p=SOND> (last visited August 10, 2023).

<sup>27</sup> See Yahoo! Finance, <https://finance.yahoo.com/quote/CTXR/history?p=CTXR> (last visited August 10, 2023).

removal and prevention of extraneous strikes where there was no investor demand. The Exchange's proposal requires the satisfaction of an average daily trading volume threshold in addition to the underlying stock closing at a price below \$2.50 to be eligible for the program. The Exchange believes that the average daily trading volume threshold of the program ensures that only strikes with investor demand will be listed and fills a gap in strike interval coverage as described above. Further, being that the strike interval is \$0.50, there are only a maximum of four strikes that may be added (\$0.50, \$1.00, \$1.50, and \$2.00). Therefore, the Exchange does not believe that its proposal will undermine the industry's efforts to eliminate repetitive and unnecessary strikes in any fashion.

The Exchange believes that its average daily trading volume threshold promotes just and equitable principles of trade and removes impediments to and perfects the mechanisms of a free and open market and a national market system and, in general, protects investors and the public interest as it is designed to permit only those stocks with demonstrably high levels of trading activity to participate in the program. The Exchange notes that its average daily trading volume requirement is substantially greater than the average daily trading requirement currently in place on the Exchange for options on equity underlyings,<sup>28</sup> ADRs,<sup>29</sup> and broad-based indexes.<sup>30</sup>

The Exchange believes that the proposed rule change is consistent with Section 6(b)(1) of the Act, which provides that the Exchange be organized and have the capacity to be able to carry out the purposes of the Act and the rules and regulations thereunder,

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<sup>28</sup> See supra note 15.

<sup>29</sup> See supra note 16.

<sup>30</sup> See supra note 17.



and the rules of the Exchange. The proposed rule change allows the Exchange to respond to customer demand to provide meaningful strikes for low priced stocks. The Exchange does not believe that the proposed rule would create any capacity issue or negatively affect market functionality. Additionally, the Exchange represents that it has the necessary systems capacity to support the new options series and handle additional messaging traffic associated with this proposed rule change. The Exchange also believes that its Members will not experience any capacity issues as a result of this proposal. In addition, the Exchange represents that it believes that additional strikes for low priced stocks will serve to increase liquidity available as well as improve price efficiency by providing more trading opportunities for all market participants. The Exchange believes that the proposed rule change will benefit investors by giving them increased opportunities to execute their investment and hedging decisions.

Finally, the Exchange believes its proposal is designed to prevent fraudulent and manipulative acts and practices as options may only be listed on underlyings that satisfy the listing requirements of the Exchange as described in Options 4, Section 3, Criteria for Underlying Securities. Specifically, Options 4, Section 3 requires that underlying securities for which put or call option contracts are approved for listing and trading on the Exchange must meet the following criteria: (1) the security must be registered and be an “NMS stock” as defined in Rule 600 of Regulation NMS under the Exchange Act; (2) the security shall be characterized by a substantial number of outstanding shares that are widely held and actively traded.<sup>31</sup> Additionally, Options 4, Section 3 provides that absent exceptional circumstances, an underlying security will not be selected for options

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<sup>31</sup> See Options 4, Section 3(a)(1) and (2).

transactions unless: (1) there are a minimum of seven (7) million shares of the underlying security which are owned by persons other than those required to report their stock holdings under Section 16(a) of the Exchange Act; (2) there are a minimum of 2,000 holders of the underlying security; (3) the issuer is in compliance with any applicable requirements of the Exchange Act; and (4) trading volume (in all markets in which the underlying security is traded) has been at least 2,400,000 shares in the preceding twelve (12) months.<sup>32</sup> The Exchange's proposal does not impact the eligibility of an underlying stock to have options listed on it, but rather addresses only the listing of new additional option classes on an underlying listed on the Exchange in accordance to the Exchange's listings rules. As such, the Exchange believes that the listing requirements described in Options 4, Section 3 address potential concerns regarding possible manipulation. Additionally, in conjunction with the proposed average daily volume requirement described herein, the Exchange believes any possible market manipulation is further mitigated.

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

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

The Exchange does not believe that its proposed rule change will impose any burden on intra-market competition as the Rules of the Exchange apply equally to all Members of the Exchange and all Members may trade the new proposed strikes if they so choose. Specifically, the Exchange believes that investors and market participants will

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<sup>32</sup> See Options 4, Section 3(b)(1), (2), (3) and (4).

significantly benefit from the availability of finer strike price intervals for stocks priced below \$2.50, which will allow them to tailor their investment and hedging needs more effectively. The Exchange's proposal is substantively identical to MIAX Interpretations and Policies .11 and .12 to Rule 404.

The Exchange does not believe that its proposed rule change will impose any burden on inter-market competition, as nothing prevents other options exchanges from proposing similar rules to list and trade options on low priced stocks. Rather the Exchange believes that its proposal will promote inter-market competition, as the Exchange's proposal will result in additional opportunities for investors to achieve their investment and trading objectives, to the benefit of investors, market participants, and the marketplace in general.

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<sup>33</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>34</sup>

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<sup>33</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>34</sup> 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

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](mailto:rule-comments@sec.gov). Please include file number SR-ISE-2023-30 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-2023-30. 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

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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.

(<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-2023-30 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.<sup>35</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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<sup>35</sup> 17 CFR 200.30-3(a)(12).

**EXHIBIT 5**

*New text is underlined; deleted text is in brackets.*

**Nasdaq ISE, LLC Rules**

\* \* \* \* \*

**Options Rules**

\* \* \* \* \*

**Options 4 Options Listing Rules**

\* \* \* \* \*

**Section 5. Series of Options Contracts Open for Trading**

\* \* \* \* \*

**Supplementary Material to Options 4, Section 5**

\* \* \* \* \*

.07 With respect to listing Short Term Option Series in equity options, excluding Exchange-Traded Fund Shares and ETNs, which have an expiration date more than twenty-one days from the listing date, the following table, which specifies the applicable interval for listing, will apply as noted within Supplementary Material .03(f). To the extent there is a conflict between applying Supplementary Material .03(e) and the below table, the greater interval would apply.

Tier	Average Daily Volume	Share Price					
		<u>Less than \$2.50</u>	<u>\$2.50 to less than \$25</u>	<u>\$25 to less than \$75</u>	<u>\$75 to less than \$150</u>	<u>\$150 to less than \$500</u>	<u>\$500 or greater</u>
1	Greater than 5,000	<u>\$0.50</u>	\$0.50	\$1.00	\$1.00	\$5.00	\$5.00
2	Greater than 1,000 to 5,000	<u>\$0.50</u>	\$1.00	\$1.00	\$1.00	\$5.00	\$10.00
3	0 to 1,000	<u>\$0.50</u>	\$2.50	\$5.00	\$5.00	\$5.00	\$10.00

The Share Price would be the closing price on the primary market on the last day of the calendar quarter.

The Average Daily Volume would be the total number of options contracts traded in a given security for the applicable calendar quarter divided by the number of trading days in the applicable calendar quarter.

Beginning on the second trading day in the first month of each calendar quarter, the Average Daily Volume shall be calculated by utilizing data from the prior calendar quarter based on Customer-cleared volume at The Options Clearing Corporation. For options listed on the first trading day of a given calendar quarter, the Average Daily Volume shall be calculated using the quarter prior to the last trading calendar quarter.

Short Term Options Series that are newly eligible for listing pursuant to Options 4, Section 3 will not be subject to this proposed Supplementary .07 until after the end of the first full calendar quarter following the date the option class was first listed for trading on any options market.

In the event of a corporate action, the Share Price of the surviving company would be utilized.

**.08 Low Priced Stock Strike Price Interval Program.**

**(a) Eligibility for the Low Priced Stock Strike Price Interval Program.** To be eligible for inclusion in the Low Priced Stock Strike Price Interval Program, an underlying stock must (i) close below \$2.50 in its primary market on the previous trading day; and (ii) have an average daily trading volume of at least 1,000,000 shares per day for the three (3) preceding calendar months.

**(b) Strike Prices to be Added.** After a stock is added to the Low Priced Stock Strike Price Interval Program, the Exchange may list \$0.50 strike price intervals from \$0.50 up to \$2.00.

(1) For the purpose of adding strikes under the Low Priced Stock Strike Price Interval Program, the “price of the underlying stock” shall be measured in the same way as “the price of the underlying security” is as set forth in Options 4, Section 6(b)(i).

(2) No additional series in \$0.50 intervals may be listed if the underlying stock closes above \$2.50 in its primary market. Additional series in \$0.50 intervals may not be added until the underlying stock again closes below \$2.50.

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