

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-100743; File No. SR-ISE-2024-39)

August 16, 2024

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing of Proposed Rule Change to Amend Complex Order Risk Protections

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 August 9, 2024, 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 to amend Options 3, Section 16, Complex Order Risk Protections.

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

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

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange proposes to amend Options 3, Section 16, Complex Order Risk Protections. Specifically, the Exchange proposes to amend Options 3, Section 16(b), Strategy Protections, to provide that the protections in Options 3, Section 16(b) would not apply to a Complex Order that includes at least one P.M.-settled leg and at least one A.M.-settled leg.

The Exchange received approval to permit the listing and trading of p.m.-settled Nasdaq-100 Index® options³ with a third-Friday of-the-month expiration.⁴ With this amendment, Options 4A, Section 12 was amended to permit the listing of p.m.-settled third-Friday-of-the-month Expiration Dates under the trading symbol “NDXP.” Therefore, ISE may list third-Friday-of-the-month expirations on Nasdaq-100 Index options that are both a.m.-settled and p.m.-settled on the same day.⁵

Pursuant to Options 3, Section 14(a)(1), a Complex Options Strategy is the simultaneous purchase and/or sale of two or more different options series in the same underlying security, for the same account, in a ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00) and for the purpose of executing a particular investment strategy. Only those Complex Options Strategies with no more than the applicable number of legs, as

³ Nasdaq-100 Index options trade under the symbol (“NDX”).

⁴ See Securities Exchange Act Release No. 98935 (November 14, 2023), 88 FR 80792 (November 20, 2023) (SR-ISE-2023-20) (Order Approving a Proposed Rule Change To Permit the Listing and Trading of P.M.-Settled Nasdaq-100 Index® Options With a Third-Friday-of-the-Month Expiration) (“SR-ISE-2023-20”). The Exchange has not yet listed a Third-Friday-of-the-Month P.M. expiration.

⁵ The conditions for listing p.m.-settled third-Friday-of-the-month expirations on Nasdaq-100 Index options will be similar to those for a.m.-settled third-Friday-of-the-month expirations on Nasdaq-100 Index options.

determined by the Exchange on a class-by-class basis, are eligible for processing.⁶ Pursuant to Options 3, Section 16(b), Vertical Spread Protections,⁷ Calendar Spread Protections,⁸ Butterfly Spread Protections⁹ and BOX Spread Protections¹⁰ apply throughout the trading day to Complex Orders, including pre-market, during the Opening Process and during a trading halt.¹¹

With the approval of SR-ISE-2023-20, a Complex Options Strategy may consist of legs with different expirations based on settlement (a.m. or p.m.-settled). The Exchange proposes to provide at Options 3, Section 16(b) that the complex risk protections would not apply to a Complex Order that includes at least one P.M.-settled leg and at least one A.M.-settled leg. The last day of trading for A.M.-settled index options shall be the business day preceding the business day of expiration, or, in the case of an option contract expiring on a day that is not a business day, the business day preceding the last day of trading in the underlying securities prior to the expiration date.¹² In contrast, the last day of trading for P.M.-settled index options shall be

⁶ The term “complex strategy” includes Complex Options Strategies, Stock-Option Strategies, and Stock-Complex Strategies. See Options 3, Section 14(a)(4).

⁷ A vertical spread is an order to buy a call (put) option and to sell another call (put) option in the same security with the same expiration but at a higher (lower) strike price. See Options 3, Section 16(b)(1).

⁸ A calendar spread is an order to buy a call (put) option with a longer expiration and to sell another call (put) option with a shorter expiration in the same security at the same strike price. See Options 3, Section 16(b)(2).

⁹ A butterfly spread is a three legged Complex Order with the following: (1) two legs to buy (sell) the same number of calls (puts); (2) one leg to sell (buy) twice the number of calls (puts) with a strike price at mid-point of the two legs to buy (sell); (3) all legs have the same expiration; and (4) each leg strike price is equidistant from the next sequential strike price. See Options 3, Section 16(b)(3).

¹⁰ A box spread is a four legged Complex Order with the following: (1) one pair of legs with the same strike price with one leg to buy a call (put) and one leg to sell a put (call); (2) a second pair of legs with a different strike price from the pair described in (1) with one leg to sell a call (put) and one leg to buy a put (call); (3) all legs have the same expiration; and (4) all legs have equal volume. See Options 3, Section 16(b)(4).

¹¹ The protections do not apply to Complex Orders being auctioned and auction responses in the Facilitation Mechanism, Solicited Order Mechanism within Options 3, Section 11, and Price Improvement Mechanism within Options 3, Section 13 and do not apply to Customer Cross Orders pursuant to Options 3, Section 12. See Options 3, Section 16(b).

¹² See Options 4A, Section 12(a)(5).

the business day of expiration, or, in the case of an option contract expiring on a day that is not a business day, on the last business day before its expiration date.¹³

At this time, the Exchange proposes to not apply the strategy protections in Options 3, Section 16(b) to a Complex Order that includes at least one P.M.-settled leg and at least one A.M.-settled leg.¹⁴ A Complex Order that includes at least one P.M.-settled leg and at least one A.M.-settled leg would not qualify as a Vertical Spread, Butterfly Spread, Calendar Spread or BOX Spread because the P.M.-settled leg and the A.M.-settled leg would have different expirations. The System considers these Complex Orders to be different products, as well as customized Complex Orders, so System limitations would prevent the application of the Strategy Price Protections to these Complex Orders. The Exchange notes that the Vertical Spread Protections, Butterfly Spread Protections and BOX Spread Protections all have the same expirations unlike a Complex Order that includes at least one P.M.-settled leg and at least one A.M.-settled leg. The Exchange also notes that the System considers a Calendar Spread to have all legs in the same product, unlike a Complex Order that includes at least one P.M.-settled leg and at least one A.M.-settled leg. A Complex Order that includes at least one P.M.-settled leg and at least one A.M.-settled leg would still be subject to the price limits for Complex Orders in Options 3, Section 16(a) and the price protections in Options 3, Section 16(c), namely the Complex Order Price Protection, Size Limitation and Price Level Protection.

Implementation

The Exchange intends to begin implementation of the proposed rule change by Q1 2025. The Exchange will announce the date to Members in an Options Trader Alert.

¹³ See Options 4A, Section 12(a)(6).

¹⁴ The a.m. expiration and p.m. expiration would have different settlement days.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁵ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁶ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Exchange's proposal to exclude a Complex Order that includes at least one P.M.-settled leg and at least one A.M.-settled leg¹⁷ from the strategy protections in Options 3, Section 16(b) removes impediments to and perfect the mechanism of a free and open market because it would not qualify as a Vertical Spread, Butterfly Spread, Calendar Spread, or BOX Spread because the P.M.-settled leg and the A.M.-settled leg would have different expirations. The System considers these Complex Orders to be different products, as well as customized Complex Orders, so System limitations would prevent the application of the Strategy Price Protections to these Complex Orders. The Exchange notes that the Vertical Spread Protections, Butterfly Spread Protections and BOX Spread Protections all have the same expirations unlike a Complex Order that includes at least one P.M.-settled leg and at least one A.M.-settled leg. The Exchange also notes that the System considers a Calendar Spread to have all legs in the same product, unlike a Complex Order that includes at least one P.M.-settled leg and at least one A.M.-settled leg. A Complex Order that includes at least one P.M.-settled leg and at least one A.M.-settled leg would still be subject to the price limits for Complex Orders in Options 3, Section 16(a) and the price protections in Options 3, Section 16(c), namely the Complex Order Price Protection,

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(5).

¹⁷ The a.m. expiration and p.m. expiration would have different settlement days.

Size Limitation and Price Level Protection. Finally, the Exchange's proposal informs Members that the strategy protections would not apply in those cases where the Member elected to utilize a combination of A.M.-Settled and P.M.-Settled leg expirations in the Complex Order.

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's proposal does not impose an undue burden on intra-market competition because the proposed changes are going to apply equally to all Members. The Exchange's proposal does not impose an undue burden on inter-market competition as other exchanges that utilize third-Friday of-the-month P.M.-Settled Options could also adopt a similar rule.

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 Act¹⁸ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁹

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

¹⁸ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁹ 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.

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-2024-39 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-2024-39. 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-2024-39 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.²⁰

J. Matthew DeLesDernier,

Deputy Secretary.

²⁰ 17 CFR 200.30-3(a)(12).