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SECURITIES AND EXCHANGE COMMISSION
[Release No. 34-98409; File No. SR-ISE-2023-11]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Order Instituting Proceedings to Determine Whether to Approve or Disapprove Proposed Rule Change to Amend the Short Term Option Series Program to Permit the Listing of Two Wednesday Expirations for Options on Certain Exchange Traded Products

September 15, 2023.

I. Introduction

On May 31, 2023, Nasdaq ISE, LLC ("Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend the Exchange's short term option series program ("Short Term Option Series Program") in Supplementary Material .03 of Options 4, Section 5 (Series of Options Contracts Open for Trading). The proposed rule change was published for comment in the Federal Register on June 20, 2023.[3] On August 2, 2023, pursuant to section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] The Commission did not receive any comments. The Commission is instituting proceedings pursuant to section 19(b)(2)(B) of the Act[6] to determine whether to approve or disapprove the proposed rule change.

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

2 17 CFR 240.19b-4.

3 See Securities Exchange Act Release No. 97719 (June 13, 2023), 88 FR 39876 ("Notice").

4 15 U.S.C. 78s(b)(2).

5 See Securities Exchange Act Release No. 98040, 88 FR 53569 (August 8, 2023) (designating September 18, 2023, as the date by which the Commission shall either approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change).

6 15 U.S.C. 78s(b)(2)(B).

II. Description of the Proposed Rule Change[7]

Currently, the Exchange may open for trading series of options on certain symbols that expire at the close of business on each of the next two Mondays, Tuesdays, Wednesdays, and Thursdays, respectively, that are business days and are not business days in which monthly options series or Quarterly Options Series expire ("Short Term Option Daily Expirations").[8] The Exchange proposes to expand the Short Term Option Series Program[9] to permit the listing of two Wednesday expirations for options on the United States Oil Fund, LP, United States Natural Gas Fund, LP, SPDR Gold Shares, iShares Silver Trust, and iShares 20+ Year Treasury Bond ETF (collectively, "Wednesday ETP Expirations").[10]

According to the Exchange, the Wednesday ETP Expirations would be similar to the existing Short Term Option Daily Expirations in that the Exchange may open for trading on any Tuesday or Wednesday that is a business day (beyond the current week)[11] series of options on the ETPs that expire on any Wednesday of the month that is a business day and is not a

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7 For a full description of the proposed rule change, refer to the Notice, supra note 3.

8 See Supplementary Material .03 to Options 4, Section 5. Currently, the Exchange may list no more than a total of two Monday and Wednesday expirations on the iShares Russell 2000 ETF ("IWM") and no more than a total of two Monday, Tuesday, Wednesday, and Thursday expirations on the SPDR S&P 500 ETF Trust ("SPY") and the Invesco QQQ Trust ("QQQ"). See Table 1, Supplementary Material .03 to Options 4, Section 5.

9 Options 1, Section 1(a)(49) provides that a Short Term Option Series means a series in an option class that is approved for listing and trading on the Exchange in which the series is opened for trading on any Monday, Tuesday, Wednesday, Thursday or Friday that is a business day and that expires on the Monday, Tuesday, Wednesday, Thursday, or Friday of the following business week that is a business day, or, in the case of a series that is listed on a Friday and expires on a Monday, is listed one business week and one business day prior to that expiration. If a Tuesday, Wednesday, Thursday or Friday is not a business day, the series may be opened (or shall expire) on the first business day immediately prior to that Tuesday, Wednesday, Thursday or Friday. For a series listed pursuant to this section for Monday expiration, if a Monday is not a business day, the series shall expire on the first business day immediately following that Monday.

10 The United States Oil Fund, LP, United States Natural Gas Fund, LP, SPDR Gold Shares, iShares Silver Trust, and iShares 20+ Year Treasury Bond ETF are referred to collectively as the "ETPs."

11 The Exchange proposes to clarify the rule text in Supplementary Material .03 to Options 4, Section 5 to specify that it can list two Short Term Option Expiration Dates beyond the current week for each Monday, Tuesday, Wednesday, and Thursday expiration. Consistent with the current operation of the rule, the Exchange states that if it adds a Wednesday expiration ("Wednesday Expiration") on a Tuesday, there would be three outstanding Wednesday Expirations at one time. See Notice, supra note 3, 88 FR at 39877, n.4.

Wednesday in which Quarterly Options Series expire.[12] And like Short Term Option Daily Expirations, in the event that Wednesday ETP Expirations would expire on a Wednesday, and that Wednesday is the same day that a Quarterly Options Series expires, the Exchange would skip that week's listing and instead list the following week; the two weeks would therefore not be consecutive. Options on each of the ETPs with Friday expirations would continue to have a total of five Short Term Option Expiration Dates, provided those Friday expirations are not Fridays in which monthly options series or Quarterly Options Series expire. The interval between strike prices for the proposed Wednesday ETP Expirations would be the same as those for the current Short Term Option Series for Friday expirations applicable to the Short Term Option Series Program.[13] As is the case with other equity options series listed pursuant to the Short Term Option Series Program, the Wednesday ETP Expirations series would be p.m.-settled.

In support of its proposal, the Exchange represents that it has an adequate surveillance program in place to detect manipulative trading in the proposed option expirations, in the same way that it monitors trading in the current Short Term Option Daily Expirations.[14] The Exchange also represents that it has the necessary system capacity to support and properly monitor trading in the proposed new expirations.[15] Additionally, the Exchange states that it does not believe that any market disruptions will be encountered with the introduction of these proposed option expirations.[16] The Exchange currently trades Short Term Option Daily Expirations on SPY, QQQ, and IWM, including Wednesday Expirations, and states that it has not experienced any market disruptions nor issues with capacity.[17] Further, the Exchange provides data comparing the

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12 See id. at 39877.

13 The Wednesday ETP Expirations would have a strike interval of $0.50 or greater for strike prices below $100, $1 or greater for strike prices between $100 and $150, and $2.50 or greater for strike prices above $150.

14 See id. at 39884.

15 See id.

16 See id.

17 See id. at 39878.

ETPs to SPY, QQQ, and IWM, which have Wednesday Expirations today.[18] According to the Exchange, the occurrence of the ETPs moving through at least one strike price after the close of trading has been less frequent than for SPY, QQQ, and IWM. In addition, the average annualized closing volatility in the last thirty minutes of trading for the ETPs has historically been lower than that of SPY, QQQ, and IWM.[19] Finally, the Exchange states that the ETPs trade within "complexes" where, in addition to the underlying security, there are multiple highly-correlated instruments available for hedging.[20] Therefore, the Exchange believes the proposal would not be a strain on liquidity providers.[21]

III. Proceedings to Determine Whether to Approve or Disapprove SR-ISE-2023-11, and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to section 19(b)(2)(B) of the Act[22] to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change to inform the Commission's analysis of whether to approve or disapprove the proposed rule change.

Pursuant to section 19(b)(2)(B) of the Act,[23] the Commission is providing notice of the grounds for disapproval under consideration. As described above, the Exchange has proposed to expand the Short Term Option Series Program to permit the listing of Wednesday ETP Expirations. The Commission is instituting proceedings to allow for additional analysis of, and

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18 See id. at 39882-83.

19 See id. at 39883.

20 See id. at 39884.

21 See id.

22 15 U.S.C. 78s(b)(2)(B).

23 Id.

input from commenters with respect to, the proposed rule change's consistency with the Act, and in particular, section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, 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.[24]

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their data, views, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change, is consistent with sections 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of data, views, and arguments, the Commission will consider, pursuant to Rule 19b-4 under the Act,[25] any request for an opportunity to make an oral presentation.[26]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by [INSERT DATE 35 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. The Commission asks that commenters address the sufficiency of the Exchange's statements in

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24 15 U.S.C. 78f(b)(5).

25 17 CFR 240.19b-4.

26 section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Public Law 94-29 (Jun. 4, 1975), grants to the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Acts Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change.

Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's internet comment form (https://www.sec.gov/rules/sro.shtml); or
- Send an email to rule-comments@sec.gov. Please include file number SR-ISE-2023-11 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-2023-11. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (https://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-ISE-2023-11 and should be submitted by [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Rebuttal comments should be submitted by [INSERT DATE 35 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

J. Matthew DeLesDernier,

Deputy Secretary.

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27 17 CFR 200.30-3(a)(57).