

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-95637; File No. SR-ISE-2022-17)

August 30, 2022

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt New Conflicts of Interest Rules

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 18, 2022, 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 Exchange filed the proposed rule change as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ 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 adopt two new rules within Sections 26 and 27 of Options 10. Also, the Exchange proposes to make other technical amendments.

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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

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 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 adopt two new rules within Sections 26 and 27 of Options 10. Also, the Exchange proposes to make technical amendments to General 2, Organization and Administration; Options 1, Section 1, Definitions; and Options 4A, Section 12, Terms of Index Options Contracts. Each change is described below.

Proposed Options 10, Section 26

The Exchange proposes to adopt a new Options 10, Section 26, titled “Transactions Involving ISE Employees” that is substantively identical to FINRA Rule 2070. This proposed rule is intended to address conflicts of interest involving ISE and its employees.

The Exchange proposes to adopt rule text within proposed Options 10, Section 26(a) that requires a Member, when it has actual notice that an ISE employee has a financial interest or controls trading in an account, to promptly obtain and implement an instruction from the employee directing that duplicate account statements be provided by the Member to ISE.

The Exchange proposes to adopt rule text within proposed Options 10, Section 26(b) that prohibits a Member from directly or indirectly making any loan of money or securities to an ISE employee. This proposed prohibition would not apply to loans made in the context of disclosed,

routine banking and brokerage agreements, or loans that are clearly motivated by a personal or family relationship.

Finally, the Exchange proposes to adopt rule text within proposed Options 10, Section 26(c) that prohibits any Member from directly or indirectly giving, or permitting to be given, anything of more than nominal value to any ISE employee who has responsibility for a regulatory matter involving the Member. This prohibition would apply regardless of the annual dollar limitation set forth in proposed Options 10, Section 27, which is discussed below. The term “regulatory matter” is proposed to be defined to include, without limitation, examinations, disciplinary proceedings, membership applications, listing applications, delisting proceedings, and dispute-resolution proceedings that involve the Member.

The Exchange believes that requiring a Member to direct that duplicate account statements be provided by the Member to ISE when it has actual notice that an ISE employee has a financial interest or controls trading in an account, prohibiting Members from making any loan of money or securities to an ISE employee subject to the exceptions set forth herein, and prohibiting Members from directly or indirectly giving, or permitting to be given, anything above nominal value to any ISE employee who has responsibility for a “regulatory matter” involving the Member will avoid conflicts of interest for ISE and its employees in the regulation of its Members. With this proposal, ISE Members who are also FINRA members would be subject to this rule which is substantively identical to FINRA Rule 2070. Additionally, ISE Members who are not FINRA members would also be subject to proposed Options 10, Section 26 to the extent that such Members conduct business with the public.

Proposed Options 10, Section 27

The Exchange proposes to adopt a new Options 10, Section 27, titled “Influencing or Rewarding Employees of Others” that is substantively identical to FINRA Rule 3220. This proposed rule is intended to provide a limitation on gifts and thereby govern influencing or rewarding the employees of others.

The Exchange proposes to adopt rule text within proposed Options 10, Section 27(a) that prohibits a Member or person associated with a Member from directly or indirectly giving or permitting to be given anything of value, including gratuities, in excess of one hundred dollars per individual per year to any person, principal, proprietor, employee, agent or representative of another person where such payment or gratuity is in relation to the business of the employer of the recipient of the payment or gratuity. A gift of any kind would be considered a gratuity.

The Exchange proposes to adopt rule text within proposed Options 10, Section 27(b) that provides that Options 10, Section 27 shall not apply to contracts of employment with or to compensation for services rendered by persons enumerated in paragraph (a) provided that there is in existence prior to the time of employment or before the services are rendered, a written agreement between the Member and the person who is to be employed to perform such services. Such agreement would include the nature of the proposed employment, the amount of the proposed compensation, and the written consent of such person’s employer or principal. The Exchange notes that this express exclusion for payments made pursuant to a bone fide, prior written agreement in paragraph (b) is excluded from the dollar value consideration in paragraph (a).

The Exchange proposes to adopt rule text within proposed Options 10, Section 27(c) that requires a separate record of all payments or gratuities in any amount known to the Member, the

employment agreement referred to in paragraph (b) and further requires the Member to retain any employment compensation paid as a result thereof for the period specified by Rule 17a-4 of the Exchange Act.⁵

Proposed Options 10, Section 27 prevents gifts in excess of a fixed amount, currently \$100. The Exchange believes that there is no business need to justify giving gifts in amounts greater than the limit specified in the rule. With this proposal, ISE Members who are also FINRA members would be subject to this rule which is substantively identical to FINRA Rule 3220. Additionally, ISE Members who are not FINRA members would also be subject to proposed Options 10, Section 27 to the extent that such Members conduct business with the public. The Exchange believes this proposed rule appropriately protects against improprieties that might arise when substantial gifts or monetary payments are given to certain persons.

Technical Amendments

The Exchange proposes to reserve rules within General 2, Organization and Administration in addition to currently reserved Sections 13 through 22, to harmonize ISE's rules with those of Nasdaq affiliate exchanges. Specifically, the Exchange proposes to reserve new Sections 23 and 24 within General 2 and add an "s" to the word "Section."

The Exchange proposes to amend a citation within the definition of "proprietary trading" at Options 1, Section 1(a)(41). The citation to "General 4, Section 1.1210" is incorrect. The citation should be to "General 4, Section 1210". Correcting this citation will avoid confusion.

The Exchange proposes to remove the word "pilot" within Supplementary Material to Options 4A, Section 12. Options 4A, Section 12 describes the options listing rules. The

⁵ 17 CFR 240.17a-4.

Quarterly Options Series pilot program was approved in 2009.⁶ The Exchange proposes to remove this updated reference to the pilot.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁸ 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. Together, proposed Options 10, Sections 26 and 27 address conflicts of interest by adopting rules that govern influencing or rewarding the employees of others and transactions involving ISE employees. The Exchange believes that adopting rules substantively identical to FINRA will help avoid confusion among Members of the Exchange who conduct business with the public that are also members of FINRA and would harmonize the Exchange's rules with FINRA rules with respect to conflicts of interest, resulting in greater uniformity and less burdensome and more efficient regulatory compliance. As such, the proposed rule change would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system.

Proposed Options 10, Section 26 is consistent with the Act and protects investors and the general public by requiring a Member to direct that duplicate account statements be provided by the Member to ISE when it has actual notice that an ISE employee has a financial interest or

⁶ See Securities Exchange Act Release No. 60275 (July 9, 2009), 74 FR 34809 (July 17, 2009) (SR-ISE-2009-50) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Permanently Establish the Quarterly Options Series Pilot Program).

⁷ 15 U.S.C. 78f(b)

⁸ 15 U.S.C. 78f(b)(5).

controls trading in an account, prohibiting Members from making any loan of money or securities to an ISE employee subject to the exceptions set forth herein, and prohibiting Members from directly or indirectly giving, or permitting to be given, anything above nominal value to any ISE employee who has responsibility for a “regulatory matter” involving the Member. These proposed rules are intended to avoid conflicts of interest for ISE and its employees in the regulation of its Members.

Proposed Options 10, Section 27 is consistent with the Act and protects investors and the general public by preventing gifts in excess of a fixed amount, currently \$100, because there is no business need to justify giving gifts in amounts greater than the limit specified in the rule. Options 10, Section 27 in conjunction with Options 10, Section 26, as proposed, protects investors and the general public by addressing conflicts of interest and governs influencing or rewarding the employees of others and transactions involving ISE employees.

Technical Amendments

The Exchange’s proposal to reserve new Sections 23 and 24 within General 2, amend a citation within the definition of “proprietary trading” within Options 1, Section 1, and remove the word “pilot” within Supplementary Material to Options 4A, Section 12 are non-substantive amendments.

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

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

Proposed Options 10, Sections 26 and 27

The proposed rule change is not designed to address any competitive issues but rather to provide greater harmonization among Exchange and FINRA rules of similar purpose, resulting in

less burdensome and more efficient regulatory compliance for common members. The Exchange's proposal to adopt new Options 10, Sections 26 and 27 does not impose an undue burden on competition as all Members that conduct business with the public would be subject to the proposed rules. Further, ISE Members who are also FINRA members would be subject to these rules which are substantively identical to FINRA Rules 2070 and 3220.

Technical Amendments

The Exchange's proposal to reserve new Sections 23 and 24 within General 2, amend a citation within the definition of "proprietary trading" within Options 1, Section 1, and remove the word "pilot" within Supplementary Material to Options 4A, Section 12 are non-substantive amendments.

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 Act⁹ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁰

⁹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁰ 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.

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 (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-ISE-2022-17 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-2022-17. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those

that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ISE-2022-17 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

J. Matthew DeLesDernier,
Deputy Secretary,

¹¹ 17 CFR 200.30-3(a)(12).