

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-89246; File No. SR-ISE-2020-28)

July 8, 2020

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Temporarily Extend the Filing Requirements for Certain Written Reports Pursuant to Options 10, Section 7

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 July 7, 2020, Nasdaq ISE, LLC (“ISE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange.³ 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 further extend the filing requirements for certain written reports pursuant to Options 10, Section 7, currently due June 30, 2020, to July 31, 2020.

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 The Commission notes that the Exchange filed this proposed rule change on July 1, 2020 (SR-ISE-2020-27). On July 7, 2020, the Exchange withdrew that filing and submitted this filing.

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

Given current and ongoing market conditions, the Exchange proposes to provide its members with continued temporary relief from filing certain supervision-related reports pursuant to Options 10, Section 7 (Supervision of Accounts).⁴

In December 2019, COVID-19 began to spread and disrupt company operations and supply chains and impact consumers and investors, resulting in a dramatic slowdown in production and spending.⁵ By March 11, 2020, the World Health Organization characterized

⁴ The Exchange notes that ISE Options 10, including Section 7, is incorporated by reference into the rulebooks of Nasdaq GEMX, LLC (“GEMX”) and Nasdaq MRX, LLC (“MRX”). As such, the amendments to ISE Options 10, Section 7 proposed herein will also impact GEMX and MRX Options 10, Section 7.

⁵ See, e.g., Chairman Jay Clayton, Proposed Amendments to Modernize and Enhance Financial Disclosures; Other Ongoing Disclosure Modernization Initiatives; Impact of the Coronavirus; Environmental and Climate-Related Disclosure (Jan. 30, 2020), available at <https://www.sec.gov/news/public-statement/clayton-md-a-2020-01-30>. (“Yesterday, I asked the staff to monitor and, to the extent necessary or appropriate, provide guidance and other assistance to issuers and other market participants regarding disclosures related to the current and potential effects of the coronavirus. We recognize that such effects may be difficult to assess or predict with meaningful precision both generally and as an industry- or issuer-specific basis. This is an uncertain issue where actual effects will depend on many factors beyond the control and knowledge of issuers.”).

COVID-19 as a pandemic.⁶ To slow the spread of the disease, federal and state officials implemented social-distancing measures, placed significant limitations on large gatherings, limited travel, and closed non-essential businesses. These measures have affected the U.S. markets.⁷ In the United States, Level 1 market wide circuit breaker halts were triggered on March 9, March 12, March 16, and March 18, 2020. While markets have seen significant declines, governments around the world are undertaking efforts to stabilize the economy and assist affected companies and their employees.⁸ While many state governments recently relaxed some social distancing measures and permitted the limited reopening of non-essential businesses, many state governments have now paused the reopening of non-essential businesses due to increased infection rates. Significant uncertainty remains.

Amidst this continued and unprecedented market uncertainty, the Exchange sought to address potential challenges that members may face in timely meeting their obligations to submit to the Exchange annual supervision-related reports under Options 10, Sections 7(g) and (h) (“Supervision Reporting Requirements”), especially in light of unforeseen and uncertain demands on resources required to respond to COVID-19. Options 10, Section 7(g) requires each Exchange member that conducts a non-member customer business to submit to the Exchange a

⁶ See WHO Director-General's Opening Remarks at the Media Briefing on COVID-19 (March 11, 2020), available at <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>.

⁷ “Analysts showed that we saw the fastest ‘correction’ in history (down 10% from a high), occurring in a matter of days. In the last week of February, the Dow fell 12.36% with notional trading of \$3.6 trillion.” See Phil Mackintosh, Putting the Recent Volatility in Perspective, available at <https://www.nasdaq.com/articles/putting-the-recent-volatility-in-perspective-2020-03-05>.

⁸ See, e.g., the list of actions undertaken by the Board of Governors of the Federal Reserve System at <https://www.federalreserve.gov/covid-19.htm>. See also Families First Coronavirus Response Act, Public Law No. 116-127.

written report on the member's supervision and compliance effort during the preceding year and on the adequacy of the member's ongoing compliance processes and procedures. Each member that conducts a public customer options business is also required to specifically include its options compliance program in the report.⁹ The Section 7(g) report is due on April 1 of each year. Options 10, Section 7(h) requires that each member submit, by April 1 of each year, a copy of the Section 7(g) report to one or more control persons or, if the member has no control person, to the audit committee of its board of directors or its equivalent committee or group.¹⁰

On each of March 31, 2020 and June 2, 2020, the Exchange filed a proposal to temporarily extend the filing requirements for these annual supervision-related reports from April 1, 2020 to June 1, 2020, and from June 1, 2020 to June 30, 2020, respectively.¹¹ In light of the continued market uncertainty, the Exchange is again seeking to address potential challenges that certain members continue to face in timely meeting their obligations to submit to the Exchange annual supervision-related reports. Accordingly, the Exchange proposes to provide additional, temporary relief for members from the Supervision Reporting Requirements by further extending the June 30, 2020 filing deadlines described above to July 31, 2020. The Exchange believes that this additional, temporary relief will permit those members who have

⁹ The report shall include, but not be limited to, the information set out in Options 10, Section 7(g)(1) – (6).

¹⁰ See Options 10, Section 7(h) for the meaning of the term “control person” and requirements in the case of a control person that is an organization.

¹¹ See Securities Exchange Act Release No. 88827 (March 31, 2020), 85 FR 19190 (April 6, 2020) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Temporarily Extend Certain Filing Requirement); Securities Exchange Act Release No. 88994 (June 2, 2020), 85 FR 35131 (June 8, 2020) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Further Extend the Deadline for Certain Written Supervisory-Related Reports Pursuant to Options 10, Section 7 (Supervision of Accounts)).

been unable to submit their annual supervision-related reports to continue to focus on running their businesses and the health crisis caused by the COVID-19 pandemic, including its impact on their employees, customers, and communities.

The Exchange notes that in response to COVID-19, the Financial Industry Reporting Authority (“FINRA”) recently reissued temporary relief for member firms by, among other things, extending the deadline for submitting its supervision-related reports (FINRA Rule 3120 Report and FINRA Rule 3130 certification) from its second extension deadlines of June 30, 2020¹² to July 31, 2020.¹³ The Exchange notes, too, that at least one other options exchange that had twice previously extended the supervisory report deadlines from April 1 to June 1 and then from June 1 to June 30 for its members,¹⁴ also plans to submit a similar filing to, again, extend its deadlines through July 31, 2020. In light of these deadline extensions, the Exchange believes that a consistent regulatory approach is important and therefore that extending its deadline would avoid unnecessary confusion and added burden among entities that are members of both the Exchange and FINRA because the deadline to submit supervisory reports would remain uniform.

2. Statutory Basis

The Exchange believes that its proposal 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

¹² See FINRA Regulatory Notice 20-08 (March 9, 2020) available at <https://www.finra.org/rules-guidance/notices/20-08>.

¹³ See FINRA Regulatory Notice 20-08, FAQs, Supervision (June 29, 2020) available at <https://www.finra.org/rules-guidance/key-topics/covid-19/faq#supe>.

¹⁴ See Securities Exchange Act No. 88528 (March 31, 2020), 85 FR 19196 (April 6, 2020) (SR-CBOE-2020-029).

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(5).

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. As a result of continued uncertainty related to the ongoing spread of the COVID-19 virus, the U.S. exchanges are experiencing unprecedented market volatility. The proposed rule change would allow the Exchange to continue to provide temporary relief to those members who continue to be unable to comply with the Supervision Reporting Requirements, which were amended twice already – most recently to require members to provide written reports to the Exchange by June 30, 2020, and further extend that deadline to July 31, 2020. The Exchange believes that this additional, temporary relief is necessary and appropriate in the public interest, and consistent with the protection of investors, given the unforeseen and uncertain challenges, including business continuity implementation and market volatility, posed by COVID-19 to members that must comply with the Supervision Reporting Requirements. The Exchange also believes that it is necessary and appropriate in the public interest, and consistent with the protection of investors, because FINRA has also re-extended twice the time for its members to file supervision-related reports, most recently from June 30, 2020 to July 31, 2020.¹⁷ Additionally, as indicated above, at least one other options exchange that had previously extended the supervisory report deadlines twice, from April 1 to June 1 and again from June 1 to June 30 for its members,¹⁸ plans to submit a similar filing to re-extend its deadlines through July 31, 2020. Extending the deadline, therefore, will ensure that those entities that are members of both FINRA and the Exchange have a uniform deadline to submit their supervisory reports.

¹⁷ See supra note 11.

¹⁸ See supra note 12.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues but rather to provide temporary relief for all members that are required to comply with the Supervision Reporting Requirements.

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) of the Act¹⁹ and subparagraph (f)(6) of Rule 19b-4 thereunder.²⁰

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act²¹ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)²² permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission

¹⁹ 15 U.S.C. 78s(b)(3)(A).

²⁰ 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.

²¹ 17 CFR 240.19b-4(f)(6).

²² 17 CFR 240.19b-4(f)(6)(iii).

waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Commission notes that the proposed rule change would allow the Exchange, in light of the COVID-19 pandemic, to provide temporary relief for members by further extending the deadline for written reports pursuant to the Supervision Reporting Requirements from June 30, 2020, to July 31, 2020. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.²³

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.

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-2020-28 on the subject line.

²³ For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2020-28. 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-2020-28 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.²⁴

J. Matthew DeLesDernier
Assistant Secretary

²⁴ 17 CFR 200.30-3(a)(12).