

markets, investor protection, and other issues similar to those discussed above with respect to the Distribution Standard Compliance Period. The Exchange has not explained how this would be consistent with Section 6(b)(5) and other relevant provisions of the Exchange Act.

Finally, the proposal, for the first time, would permit the Exchange to conduct a Primary Direct Floor Listing, either alone or in combination with a Selling Shareholder Direct Floor Listing, where the company being listed would sell shares in the opening auction on the first day of trading. In such a case, the company could be the only seller (or a dominant seller) participating in the opening auction, and thus could be in a position to uniquely influence the price discovery process. The Exchange, however, has not explained how its opening auction rules would apply in a Primary Direct Floor Listing, or how the Exchange would assure that the opening auction and subsequent trading promote fair and orderly markets, prevent manipulative acts and practices, protect investors, and otherwise would be consistent with Section 6(b)(5) and other relevant provisions of the Exchange Act.

The Commission notes that, under the Commission's Rules of Practice, the "burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the self-regulatory organization ['SRO'] that proposed the rule change."<sup>51</sup> The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,<sup>52</sup> and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Exchange Act and the applicable rules and regulations.<sup>53</sup>

For these reasons, the Commission believes it is appropriate to institute proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act<sup>54</sup> to determine whether the proposal should be approved or disapproved.

<sup>51</sup> Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

<sup>52</sup> See *id.*

<sup>53</sup> See *id.*

<sup>54</sup> 15 U.S.C. 78s(b)(2)(B).

## V. Commission's Solicitation of Comments

The Commission requests that interested persons provide written submissions of their views, data, 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 view of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Exchange 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 views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.<sup>55</sup>

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by April 22, 2020. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by May 6, 2020.

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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2019-67 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-NYSE-2019-67. 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 (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent

<sup>55</sup> Section 19(b)(2) of the Exchange Act, as amended by the Securities Act Amendments of 1975, Public Law 94-29 (June 4, 1975), grants 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 Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

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 such 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-NYSE-2019-67 and should be submitted on or before April 22, 2020. Rebuttal comments should be submitted by May 6, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>56</sup>

**J. Matthew DeLesDernier,**  
*Assistant Secretary.*

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**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meetings

**TIME AND DATE:** Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission Investor Advisory Committee will hold a public meeting on Thursday April 2, 2020, by remote means and/or at the Commission's headquarters, 100 F St. NE, Washington, DC 20549.

**PLACE:** The meeting will begin at 4:00 p.m. (ET) and will be open to the public. The meeting will be conducted by remote means and/or at the Commission's headquarters, 100 F St. NE, Washington, DC 20549. Members of the public may watch the webcast of the meeting on the Commission's website at [www.sec.gov](http://www.sec.gov).

<sup>56</sup> 17 CFR 200.30-3(a)(57).

**STATUS:** This Sunshine Act notice is being issued because a majority of the Commission may attend the meeting.

**MATTERS TO BE CONSIDERED:** The agenda for the meeting includes welcome remarks and a discussion regarding the impact of the COVID-19 Novel Coronavirus on investors and its implications (which may include a recommendation of the Committee).

**CONTACT PERSON FOR MORE INFORMATION:** For further information and to ascertain what, if any, matters have been added, deleted or postponed; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551-5400.

Dated: March 30, 2020.

**Vanessa A. Countryman,**  
Secretary.

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**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-88484; File No. SR-ISE-2020-13]

### Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 3, Section 8, Opening

March 26, 2020.

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 March 24, 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. 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 ISE Rules at Options 3, Section 8, titled “Opening.”

The text of the proposed rule change is available on the Exchange’s website at <http://ise.cchwallstreet.com/>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

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

### 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 amend ISE Rules at Options 3, Section 8, titled “Opening.” The Exchange proposes to rename this rule “Options Opening Process.” Specifically, the Exchange is proposing to amend the definition of “market for the underlying security.”

Today Options 3, Section 8(a)(2) describes “market for the underlying security” as “. . . either the primary listing market or the primary volume market (defined as the market with the most liquidity in that underlying security for the previous two calendar months), as determined by the Exchange by underlying and announced to the membership on the Exchange’s website.”

The Exchange proposes to amend this definition by replacing the term “primary volume market” with “an alternative market designated by the primary market.” The Exchange anticipates that an alternative market would be necessary if the primary listing market were impaired.<sup>3</sup> In the event that a primary market is impaired and utilizes its designated alternative market, the Exchange would utilize that market as the underlying.<sup>4</sup> The Exchange further proposes an additional contingency. In the event that the primary market is unable to open, and an alternative market is not designated (and/or the designated alternative market does not open), the Exchange

<sup>3</sup> The Exchange notes that the primary listing market and the primary volume market as defined in ISE’s Rules could be the same market and therefore an alternative market is not available under the current Rule.

<sup>4</sup> For example, in the event that the New York Stock Exchange LLC was unable to open because of an issue with its market and it designated NYSE Arca, Inc. (“NYSE Arca”) as its alternative market, then PHLX [sic] would utilize NYSE Arca as the market for the underlying.

may utilize a non-primary market to open all underlying securities from the primary market. The Exchange will select the non-primary market with the most liquidity in the aggregate for all underlying securities that trade on the primary market for the previous two calendar months, excluding the primary and alternate markets. The Exchange notes that in order to open an option series it would require an equity market’s underlying quote. If another equity market displays opening prices for the underlying security, the Exchange proposes to utilize those quotes. This proposed change to the current System would allow the Exchange to open in situations where the primary market is experiencing an issue and also where an alternative market designated by the primary market may not be designated by the primary market or is unable to open. The Exchange believes that this proposal would effectively provide the Exchange with additional opportunities to open the market and provide its members with a venue in which to transact options trading. The Exchange notes that utilizing a non-primary market with the most liquidity in the aggregate for all underlying securities for the previous two calendar months will ensure that the Exchange opens with quotes which are representative of the volume on that primary market. The Exchange believes that this proposal will enable it to open in the event that there are issues with the primary market or the alternate market assigned by the primary.

The Exchange also proposes to make a corresponding amendment to Options 3, Section 8(c)(2) to replace the reference to “primary market” with the defined term “market for the underlying security.”

##### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>5</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>6</sup> in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest by providing for alternative processes to determine the market for the underlying. The Exchange’s proposal to amend the definition of “market for the underlying security” within Options 3, Section 8(a)(2) is consistent with the Act.

First, the Exchange’s proposal would remove the concept of a primary volume market and replace that concept with an

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).