

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-96177; File No. SR-ISE-2022-23]

### Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Standard Monthly Expirations for NQX

October 28, 2022.

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 October 17, 2022, 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 Exchange has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act,<sup>3</sup> which renders the proposal effective upon receipt of this filing by the Commission. 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 permit ISE to list up to 12 standard monthly expirations for options based on 1/5 the value of the Nasdaq-100 Index<sup>®</sup> (“NQX”).

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 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

ISE proposes to amend its index listing rules at Options 4A, Section 12(a)(3) to allow it to list up to 12 standard monthly expirations for options based on 1/5 the value of the Nasdaq-100 Index (“NQX”).

Currently, Options 4A, Section 12(a)(3) provides that the Exchange may list: (i) up to six (6) standard monthly expirations at any one time in a class, but will not list index options that expire more than twelve (12) months out; (ii) up to 12 standard monthly expirations at any one time for any class that the Exchange (as the Reporting Authority) uses to calculate a volatility index; and (iii) up to 12 standard (monthly) expirations in NDX options.<sup>4</sup> Today, the maximum number of monthly expirations permitted by Options 4A, Section 12(a)(3) for NQX options is six (6) standard monthly expirations.

At this time, like Nasdaq-100 Index options (“NDX”), the Exchange proposes to permit up to 12 standard (monthly) expirations in NQX options. This would permit the Exchange to list the same number of monthly expirations (up to 12) for NQX options as currently permitted for options on the corresponding full-value index, Nasdaq-100 Index.

Today, NQX options trade independently of and in addition to NDX options, and the NQX options are subject to the same rules that presently govern the trading of NDX options, including sales practice rules, margin requirements, trading rules, and position and exercise limits. Like NDX, NQX options are European-style and cash-settled, and have a contract multiplier of 100. The contract specifications for NQX options mirror in all respects those of the NDX options contract listed on the Exchange, except that NQX options are based on 1/5 of the value of the Nasdaq-100 Index, and are

<sup>4</sup> Options 4A, Section 12(a)(3) states, “Expiration Months and Weeks. Index options contracts may expire at three (3)-month intervals or in consecutive weeks or months. The Exchange may list: (i) up to six (6) standard monthly expirations at any one time in a class, but will not list index options that expire more than twelve (12) months out; (ii) up to 12 standard monthly expirations at any one time for any class that the Exchange (as the Reporting Authority) uses to calculate a volatility index; and (iii) up to 12 standard (monthly) expirations in NDX options.”

P.M.-settled pursuant to Options 4A, Section 12(a)(6).<sup>5</sup>

Market participants may use NQX options as a hedging vehicle to meet their investment needs in connection with the Nasdaq-100 Index. Since both products are used to hedge exposure to the Nasdaq-100 Index, the Exchange believes it is appropriate to permit the Exchange to be able to list the same number of monthly expirations for NQX options as it does today for NDX options.

The Exchange notes that Cboe Exchange, Inc.’s (“Cboe”) rules permit it to list up to 12 standard monthly expirations for Mini-Russell 2000 Index (“Mini-RUT” or “MRUT”) and Mini S&P 500 Index (“Mini-SPX” or “XSP”).<sup>6</sup> Mini-SPX is p.m.-settled and subject to a pilot program similar to NQX.

##### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>8</sup> 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.

Allowing ISE to list up to 12 standard monthly expirations for NQX options will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors, because it will allow the Exchange to be able to list the same number of expirations for options on a reduced-value index (NQX) as it currently lists for NDX options, which are options on the corresponding full-value index. The Exchange notes that because the same components comprise NQX as the Nasdaq-100 Index, market participants may use NQX options as a hedging vehicle to meet their investment needs in connection with the corresponding full-value index-related product. Therefore, by allowing the Exchange to be able to list a consistent number of expirations between options on the full-value and reduced-value index, the proposed rule change will benefit investors by assisting them in more effectively using options that track the same index to meet their investment needs.

<sup>5</sup> The Exchange notes that NDX options are both a.m.-settled and p.m.-settled while NQX options are only p.m.-settled.

<sup>6</sup> See Cboe Rule 4.13(a)(2).

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

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

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

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

The Exchange notes that today, Cboe rules permit it to list up to 12 standard monthly expirations for Mini-Russell 2000 Index (“Mini-RUT” or “MRUT”) and Mini S&P 500 Index (“Mini-SPX” or “XSP”).<sup>9</sup>

#### *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 Exchange does not believe that the proposed rule change will impose any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act as all monthly expirations listed for NQX options will be equally available, or continue to be equally available, to all market participants who trade such options. Also, the proposed number of expirations will apply, or continue to apply, in the same manner to all NQX options. The proposed rule change makes it possible for the same expirations to be listed for options on the reduced-value index (NQX) that are currently available for NDX options, which are options on the full-value index, Nasdaq-100 Index.

The Exchange does not believe that the proposed rule change regarding the number of standard monthly expirations permissible for NQX options will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because NQX is a proprietary Exchange product. To the extent that allowing up to 12 standard monthly expirations for NQX options trading on the Exchange may make the Exchange a more attractive marketplace to market participants at other exchanges, such market participants are free to elect to become market participants on ISE. As noted above, the Exchange believes that being able to list a consistent number of monthly expirations of options on both the full-value and reduced-value index may permit investors to more effectively use options that track the same index to meet their investment needs.

This proposal enhances intermarket competition because it permits ISE’s proprietary product, NQX, the same flexibility to trade, and hedge, with 12 standard monthly expirations as certain Cboe proprietary products.

#### *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 after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6)<sup>11</sup> thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>12</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>13</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Exchange states that waiver of the operative delay will protect investors because it will allow the Exchange to be able to list expirations for NQX options that are consistent with the expirations for related NDX options, and assist market participants in more effectively utilizing both the full-value index and reduced-value option as hedging vehicles to meet their investment needs in connection with the Nasdaq-100 Index product as soon as feasible. Further, the Exchange states that there is investor demand to be able to transact in the same number of expirations for NQX options as the Exchange currently lists for NDX options (that is, 12 standard monthly expirations). For these reasons, and because the proposed rule change does not raise any novel regulatory issues, the Commission believes that waiving

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 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, along with a brief description and text of 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.

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

<sup>13</sup> 17 CFR 240.19b-4(f)(6)(iii).

the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.<sup>14</sup>

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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-ISE-2022-23 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-2022-23. 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 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

<sup>14</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>9</sup> See Cboe Rule 4.13(a)(2).

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 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-ISE-2022-23 and should be submitted on or before November 25, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**J. Matthew DeLesDernier,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-96176; File No. SR-NASDAQ-2022-057]

### Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change To Adopt Listing Rule 5732 To Provide Listing Standards for Contingent Value Rights on Nasdaq Global Market

October 28, 2022.

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 October 17, 2022, The Nasdaq Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. 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 Listing Rule 5732 to provide listing standards for Contingent Value Rights on Nasdaq Global Market.

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/>

*rulebook/nasdaq/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 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

Nasdaq proposes to adopt Listing Rule 5732 to provide listing standards for Price-Based and Event-Based Contingent Value Rights (each a "CVR" and collectively, "CVRs") on Nasdaq Global Market, which are unsecured obligations of the issuer providing for a possible cash payment at maturity.<sup>3</sup> The Exchange believes that the proposed rule change will increase competition by providing an additional listing venue for CVRs, which can currently be listed on other securities exchanges. CVRs are often used to bridge valuation gaps relating to uncertain future events that may influence the value of a target company and, more generally, may be employed to aid in the completion of deals by helping to solve certain of the valuation and closing challenges that the parties encounter.

Specifically, the cash payment at maturity for a CVR can be based upon the price performance of an affiliate's equity security (a "Price-Based CVR") or upon the occurrence of a specified event or events related to the business of the issuer or an affiliate of the issuer (an "Event-Based CVR"). At maturity, the holder of a Price-Based CVR is entitled to a cash payment if the average market price of the related equity security is

less than a pre-set target price. The target price is established at the time the Price-Based CVR is issued. Conversely, should the average market price of the related equity security equal or exceed the target price, the Price-Based CVR would expire worthless. Price-Based CVRs are generally distributed to shareholders of an acquired company who are receiving shares of the acquirer as acquisition consideration. The Price-Based CVRs provide the acquiree's shareholders with some medium-term protection against poor stock price performance of the shares of the acquirer by guaranteeing them a specified cash payment if the acquirer's average stock price is below a specified level at the time of maturity of the Price-Based CVR.

Event-Based CVRs are also typically issued to the shareholders of an acquired entity as consideration in an acquisition transaction. Event-Based CVRs entitle their holders to receive a specified cash payment upon the occurrence of a specified event or events related to the business of the issuer or an affiliate of the issuer prior to the maturity date of the Event-Based CVR. The Event-Based CVR provides the shareholders of the acquiree an additional interest in the medium-term performance of the merged entity upon occurrence of its specified event(s). An example of a typical Event-Based CVR occurs in mergers of life sciences companies, when the CVR payment is triggered by the receipt of FDA approval of a new drug application. Another example of an Event-Based CVR is a CVR issued in connection with a merger whose payment triggering event is the achievement of a specified level of financial performance by the combined entity or by a division of the combined entity representing the assets from the acquired company. Event-Based CVRs, which are transferrable, have become increasingly common in recent years, especially in connection with mergers of life sciences companies.

For initial listing on the Nasdaq Global Market, the issuer must have assets in excess of \$100 million, satisfy the requirement of Nasdaq Rule 5315(f)(3)(A)<sup>4</sup> or have at least \$200 million in global market capitalization and satisfy the requirement of Rule

<sup>3</sup> The proposed rule change is based on Section 703.18 of the NYSE Listed Company Manual, related to initial listing of CVRs, and the provisions of Section 802.01D applicable to "Specialized Securities", related to continued listing of CVRs. See Securities Exchange Act Release No. 26072 (May 30, 1990), 55 FR 23166 (June 6, 1990) (SR-NYSE-90-15) (adopting NYSE rules related to Price-Based CVRs); Securities Exchange Act Release No. 86651 (August 13, 2019), 84 FR 42967 (August 19, 2019) (SR-NYSE-2019-14) (adopting NYSE rules related to Event-Based CVRs).

<sup>4</sup> Specifically, to satisfy Nasdaq Rule 5315(f)(3)(A) a Company, other than a closed end management investment company, must aggregate income from continuing operations before income taxes of at least \$11 million over the prior three fiscal years, (ii) positive income from continuing operations before income taxes in each of the prior three fiscal years, and (iii) at least \$2.2 million income from continuing operations before income taxes in each of the two most recent fiscal years.

<sup>15</sup> 17 CFR 200.30-3(a)(12).

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

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