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For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Sherry R. Haywood,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98930; File No. SR–NSCC–2023–007]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Partial Amendment No. 1 and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Partial Amendment No. 1, Concerning Modifications to the Amended and Restated Stock Options and Futures Settlement Agreement Between The Options Clearing Corporation and the National Securities Clearing Corporation

November 14, 2023.

I. Introduction

On August 10, 2023, the National Securities Clearing Corporation (“NSCC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change SR–NSCC–2023–007 (“Proposed Rule Change”) pursuant to section 19(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 19b–4² thereunder to modify the Amended and Restated Stock Options and Futures Settlement Agreement dated August 5, 2017, between OCC and National Securities Clearing Corporation, NSCC’s related rules.³ The Proposed Rule Change was published for public comment in the **Federal Register** on

August 30, 2023.⁴ The Commission has received no comments regarding the Proposed Rule Change.

On September 25, 2023, pursuant to section 19(b)(2) of the Exchange Act,⁵ the Commission designated a longer period within which to approve, disapprove, or institute proceedings to determine whether to approve or disapprove the Proposed Rule Change.⁶ On November 8, 2023, NSCC filed a Partial Amendment No. 1 to the Proposed Rule Change.⁷ The Commission is publishing this notice to solicit comments on Partial Amendment No. 1 from interested persons and is instituting proceedings, pursuant to section 19(b)(2)(B) of the Exchange Act,⁸ to determine whether to approve or disapprove the proposed rule change, as modified by the Partial Amendment No. 1 (hereinafter defined as “Proposed Rule Change”).

II. Summary of the Proposed Rule Change

NSCC is a clearing agency that provides clearing, settlement, risk management, and central counterparty services for trades involving equity securities. OCC is the sole clearing agency for standardized equity options listed on national securities exchanges registered with the Commission, including options that contemplate the physical delivery of equities cleared by NSCC in exchange for cash (“physically settled” options).⁹ OCC also clears certain futures contracts that, at maturity, require the delivery of equity securities cleared by NSCC in exchange for cash. As a result, the exercise and

assignment of certain options or maturation of certain futures cleared by OCC effectively results in stock settlement obligations to be cleared by NSCC (“E&A Activity”). NSCC and OCC maintain a legal agreement, generally referred to by the parties as the “Accord” agreement, that governs the processing of such E&A Activity for firms that are members of both OCC and NSCC (“Common Members”).

Under certain circumstances, the Accord currently allows NSCC not to guaranty the settlement of securities arising out of E&A Activity for a defaulted Common Member. To the extent NSCC chooses not to guaranty such transactions, OCC would have to engage in an alternate method of settlement outside of NSCC to manage the default of the Common Member, which presents two issues. First, based on historical data, the cash required for such alternative settlement could be as much as \$300 billion.¹⁰ Second, settlement outside of NSCC introduces significant operational complexities.¹¹

NSCC proposes to revise the Accord to address the liquidity and operational issues that arise under the current Accord. Specifically, the proposed changes to the Accord would require NSCC to guaranty the positions of a defaulting Common Member if OCC makes a payment to cover the incremental risk posed by such positions (the “Guaranty Substitution Payment” or “GSP”). Based on historical data, the GSP could be as much as \$6 billion (in contrast with the potential \$300 billion required for alternative settlement).¹²

The total amount owed by the Common Member would be a combination of the member’s unpaid deposit to the NSCC Clearing Fund (“Required Fund Deposit”) and Supplemental Liquidity Deposit.¹⁴ The SLD portion of the GSP would be the unpaid SLD associated with any E&A Activity. The Required Fund Deposit portion of the GSP, however, would be estimated by reference to the day-over-day change in gross market value of the Common Member’s positions at NSCC

⁴ Securities Exchange Act Release No. 98213 (Aug. 24, 2023), 88 FR 59968 (Aug. 30, 2023) (File No. SR–NSCC–2023–007) (“Notice of Filing”).

⁵ 15 U.S.C. 78s(b)(2).

⁶ Securities Exchange Act Release No. 98508 (Sep. 25, 2023), 88 FR 67407 (Sep. 29, 2023) (File No. SR–NSCC–2023–007).

⁷ Partial Amendment No. 1 delays implementation of the proposed change. As amended, NSCC would implement the proposed rule change within 90 days of receiving all necessary regulatory approvals and would announce the specific date of implementation on its public website at least 14 days prior to implementation. The delay is proposed in light of the technical system changes that are required to implement the liquidity stress testing enhancements and to be able to provide sufficient notice to Clearing Members following receipt of approval.

⁸ 15 U.S.C. 78s(b)(2)(B).

⁹ The term “physically-settled” refers to cleared contracts that settle into their underlying interest (*i.e.*, options or futures contracts that are not cash-settled). When a contract settles into its underlying interest, shares of stock are sent (*i.e.*, delivered) to contract holders who have the right to receive the shares from contract holders who are obligated to deliver the shares at the time of exercise/assignment in the case of an option and maturity in the case of a future.

¹⁰ See Notice of Filing, 88 FR at 59969.

¹¹ See *id.*

¹² See *id.*

¹³ The Required Fund Deposit is calculated pursuant to Rule 4 (Clearing Fund) and Procedure XV (Clearing Fund Formula and Other Matters) of the NSCC Rules. See Notice of Filing, 88 FR at 59971, n.26.

¹⁴ Under the NSCC Rules, NSCC collects additional cash deposits from those Members who would generate the largest settlement debits in stressed market conditions, referred to as “Supplemental Liquidity Deposits” or “SLD.” See Rule 4A of the NSCC Rules. See also Notice of Filing, 88 FR at 59971, n.27.

¹⁷ 17 CFR 200.30–3(a)(12).

¹⁵ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ See Notice of Filing *infra* note 4, at 88 FR 59976.

as a proxy for estimating what percentage of the member's Required Fund Deposit is attributable to E&A Activity. NSCC acknowledges that this methodology overestimates or underestimates the Required Fund Deposit attributable to a Common Member's E&A activity, but states that current technology constraints prohibit NSCC from performing a precise calculation of the GSP on a daily basis for every Common Member.¹⁵ In addition to revising the Accord, NSCC also proposes changes to its rules in connection with the proposed changes to the Accord. For example, NSCC would amend its rules to clarify that NSCC's guaranty would attach when NSCC receives both the Required Fund Deposit and Supplemental Liquidity Deposit.¹⁶

III. Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to section 19(b)(2)(B) of the Exchange Act to determine whether the Proposed Rule Change should be approved or disapproved.¹⁷ Institution of 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, the Commission seeks and encourages interested persons to comment on the Proposed Rule Change, which would provide the Commission with arguments to support the Commission's analysis as to whether to approve or disapprove the Proposed Rule Change.

Pursuant to section 19(b)(2)(B) of the Exchange Act,¹⁸ the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of, and input from commenters with respect to, the Proposed Rule Change's consistency with Section 17A of the Exchange Act,¹⁹

and the rules thereunder, including the following provisions:

- Section 17A(b)(3)(F) of the Exchange Act,²⁰ which requires, among other things, that the rules of a clearing agency are designed to promote the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions; to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible; to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions; and, in general, to protect investors and the public interest;

- Rule 17Ad-22(e)(1) under the Exchange Act,²¹ which requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions;

- Rule 17Ad-22(e)(7) under the Exchange Act,²² which requires, in part, that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to effectively measure, monitor, and manage the liquidity risk that arises in or is borne by the covered clearing agency, including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity; and

- Rule 17Ad-22(e)(20) under the Exchange Act,²³ which requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to identify, monitor, and manage risks related to any link the covered clearing agency establishes with one or more other clearing agencies, financial market utilities, or trading markets.

IV. Procedure: Request for Written 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 Proposed Rule Change. In particular, the Commission invites the written views of interested persons concerning whether the Proposed Rule Change is consistent

with section 17A(b)(3)(F)²⁴ and Rules 17Ad-22(e)(1), (e)(7), and (e)(20)²⁵ of the Exchange Act, 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(g) under the Exchange Act,²⁶ any request for an opportunity to make an oral presentation.²⁷

The Commission asks that commenters address the sufficiency of OCC's statements in support of the Proposed Rule Change, which are set forth in the Notice of Filing²⁸ 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 (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NSCC-2023-007 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-NSCC-2023-007. 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

²⁴ 15 U.S.C. 78q-1(b)(3)(F).

²⁵ 17 CFR 240.17Ad-22(e)(1), 17 CFR 240.17Ad-22(e)(7), and 17 CFR 240.17Ad-22(e)(20).

²⁶ 17 CFR 240.19b-4(g).

²⁷ Section 19(b)(2) of the Exchange Act 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 Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

²⁸ See Notice of Filing, *supra* note 4.

¹⁵ See Notice of Filing, 88 FR at 59971. OCC and NSCC have agreed that performing the necessary technology build at this time would delay the implementation of this proposal. Therefore, NSCC would consider incorporating those technology updates into future revisions to the Accord, for example in connection with a move to a shorter settlement cycle in the U.S. equities markets. See Notice of Filing, 88 FR at 59971, n.30.

¹⁶ See Notice of Filing, 88 FR at 59975.

¹⁷ 15 U.S.C. 78s(b)(2)(B).

¹⁸ *Id.*

¹⁹ 15 U.S.C. 78q-1.

²⁰ 15 U.S.C. 78q-1(b)(3)(F).

²¹ 17 CFR 240.17Ad-22(e)(1).

²² 17 CFR 240.17Ad-22(e)(7).

²³ 17 CFR 240.17Ad-22(e)(17)(i).

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 such filing also will be available for inspection and copying at the principal office of NSCC and on the Depository Trust Company's website (<http://dtcc.com/legal/sec-rule-filings.aspx>).

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–NSCC–2023–007 and should be submitted on or before December 11, 2023. Rebuttal comments should be submitted by December 26, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁹

Sherry R. Haywood,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98935; File No. SR–ISE–2023–20]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Order Approving a Proposed Rule Change To Permit the Listing and Trading of P.M.-Settled Nasdaq–100 Index® Options With a Third-Friday-of-the-Month Expiration

November 14, 2023.

I. Introduction

On September 28, 2023, Nasdaq ISE, LLC (“ISE” or “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 permit the listing and trading of p.m.-settled Nasdaq–100 Index options with a third-Friday-of-the-month (“Third Friday”) expiration. The proposed rule change was published for comment in the **Federal Register** on

October 4, 2023.³ The Commission did not receive any comment letters and is approving the proposed rule change.

II. Description of the Proposal

ISE proposes to amend its rules to permit the listing and trading of p.m.-settled Nasdaq–100 Index (“NDXP”) options with a Third Friday expiration. The Exchange currently can list a.m.-settled Third Friday expirations on Nasdaq–100 Index (“NDX”) options.⁴ With this proposal, the Exchange would have Third Friday expirations on NDX options that are both a.m.-settled and p.m.-settled on the same day.⁵ The Exchange states that the conditions for listing options on NDXP with Third Friday expirations will be similar to the a.m.-settled NDX Third Friday expirations.⁶ The Exchange proposes to amend Options 4A, Section 12(a)(6) to provide that in addition to a.m.-settled Nasdaq–100 Index options approved for trading on the Exchange, the Exchange may also list options on the Nasdaq–100 Index whose exercise settlement value is the closing value of the Nasdaq–100 Index on the expiration day.

The proposed contract would use a \$100 multiplier, and the minimum trading increment would be \$0.05 for options trading below \$3.00 and \$0.10 for all other series.⁷ Strike price intervals would be set at no less than \$2.50.⁸ Consistent with existing rules for index options, the exchange would allow up to nine near-term expiration months⁹ as well as LEAPS.¹⁰ The product would have European-style exercise. Because the product is based on NDX, there would be no position limits.¹¹

NDXP options are series of the NDX options class.¹² Currently, these NDXP options may expire any day of the week: Mondays, Tuesdays, Wednesdays, Thursdays, Fridays, as applicable (other than third-Friday-of-the-month), and the last trading day of the month.¹³ Third Friday p.m.-settled options trading under the NDXP symbol will be a new

type of series under the Nasdaq–100 Index options class and not a new options class—therefore all Third-Friday NDXP options will be aggregated together with all other standard expirations for applicable reporting and other requirements.¹⁴

As with NDX, whenever the Exchange determines that additional margin is warranted in light of the risks associated with an under-hedged NDXP option position, including Third Friday NDXP, the Exchange may consider imposing additional margin upon the account maintaining such under-hedged position pursuant to its authority pursuant to Exchange Rules Options 6E, Section 2.¹⁵ The trading hours for NDXP, including Third Friday NDXP, will be from 9:30 a.m. to 4:15 p.m. Eastern Time.¹⁶

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.¹⁷ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹⁸ which requires, among other things, that the Exchange's rules 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.

In support of its proposal, the Exchange notes that the Commission recently approved trading of Third Friday expirations for options based on 1/5 the value of the Nasdaq–100 Index (“NQX”).¹⁹ The Exchange states that the introduction of Third Friday NDXP will attract order flow to the Exchange, increase the variety of listed options to investors, and provide a valuable hedge tool to investors.²⁰ The Exchange

³ See Securities Exchange Act Release No. 98643 (September 29, 2023), 88 FR 68843 (“Notice”).

⁴ See Notice, *supra* note 3 at 68842.

⁵ See *id.*

⁶ See *id.*

⁷ See Options 3, Section 3, Minimum Increments.

⁸ See Options 4A, Section 12(c)(1).

⁹ The Exchange proposes the same expiration month options for NDXP as are permitted for the Nasdaq–100 Index, since both options classes are derived from the Nasdaq–100 Index.

¹⁰ See Options 4A, Section 12(b)(1).

¹¹ For a more detailed description of the proposed Third Friday NDXP contract, see Notice, *supra* note 3.

¹² See Notice, *supra* note 3 at 68842.

¹³ See Supplementary Material .07(a) to Options 4, Section 5.

¹⁴ See Options 3, Section 6(c) and (d).

¹⁵ See Notice, *supra* note 3 at 68843.

¹⁶ The Exchange notes that trading in NDXP will ordinarily cease at 4:00 p.m. on the day on which the exercise-settlement value is calculated. See Notice, *supra* note 3 at 68843, n. 16.

¹⁷ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁸ 15 U.S.C. 78f(b)(5).

¹⁹ See Securities Exchange Act Release No. 98450 (September 20, 2023), 88 FR 66 111 (September 26, 2023) (SR–ISE–2023–08) (Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to Make Permanent Certain P.M.-Settled Pilots) (“ISE Pilot Approval”).

²⁰ See Notice, *supra* note 3 at 68843.

²⁹ 17 CFR 200.30–3(a)(31).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.