

of p.m.-settlement on the market, including the underlying cash equities market, at the expiration of these options.

#### *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 that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change will not impose an undue burden on inter-market competition as this rule change will continue to facilitate the listing and trading of new option products that will enhance competition among market participants, to the benefit of investors and the marketplace. Furthermore, these products could offer a competitive alternative to other existing investment products. Finally, it is possible for other exchanges to develop or license the use of a new or different index to compete with these products and seek Commission approval to list and trade options on such an index.

#### XND Pilot

XND options would be available for trading to all market participants and therefore would not impose an undue burden on intra-market competition. The continued listing of XND will enhance competition by providing investors with an additional investment vehicle, in a fully-electronic trading environment, through which investors can gain and hedge exposure to the Nasdaq-100.

#### Nonstandard Pilot

Options with nonstandard expirations would be available for trading to all market participants. The continued listing of the Nonstandard Pilot will enhance competition by providing investors with an additional investment vehicle, in a fully-electronic trading environment, through which investors can gain and hedge exposure to the Nasdaq-100.

#### *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 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 Act<sup>11</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>12</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 change 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-Phlx-2022-39 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-Phlx-2022-39. 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

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) 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.

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-Phlx-2022-39, and should be submitted on or before November 3, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

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**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-95992; File No. SR-ISE-2022-20]

### **Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend Two Pilot Programs**

October 6, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 26, 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 Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>13</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.

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot to permit the listing and trading of options based on  $\frac{1}{5}$  the value of the Nasdaq-100 Index ("Nasdaq-100") and the Exchange's nonstandard expirations pilot program, both currently set to expire on November 4, 2022.

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 extend 2 pilots, which are both set to expire on November 4, 2022. The Exchange proposes to extend (1) its pilot to permit the listing and trading of options based on  $\frac{1}{5}$  the value of the Nasdaq-100 Index ("NQX Pilot"), and (2) the Exchange's nonstandard expirations pilot program ("Nonstandard Pilot").

#### NQX Pilot

ISE filed a rule change to permit the listing and trading of index options on the Nasdaq 100 Reduced Value Index ("NQX") on a twelve month pilot basis.<sup>3</sup> 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 index options based on the Nasdaq-100, including sales practice rules, margin requirements, trading rules, and position and exercise limits. Similar to NDX, NQX options are European-style and cash-settled, and have a contract multiplier of 100. The contract

<sup>3</sup> See Securities Exchange Act Release No. 82911 (March 20, 2018), 83 FR 12966 (March 26, 2018) (SR-ISE-2017-106) (Approval Order).

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  $\frac{1}{5}$  of the value of the Nasdaq-100, and are p.m.-settled pursuant to Options 4A, Section 12(a)(6).

The Exchange proposes to amend ISE Options 4A, Section 12(a)(6)(i) to extend the current NQX Pilot period to May 4, 2023. The NQX Pilot was previously extended with the last extension through November 4, 2022.<sup>4</sup> The Exchange continues to have sufficient capacity to handle additional quotations and message traffic associated with the listing and trading of NQX options. In addition, index options are integrated into the Exchange's existing surveillance system architecture and are thus subject to the relevant surveillance processes. The Exchange also continues to have adequate surveillance procedures to monitor trading in NQX options thereby aiding in the maintenance of a fair and orderly market. Additionally, there is continued investor interest in these products and this extension will provide additional time to collect data related to the NQX Pilot. The Exchange believes that the proposed extension of the NQX Pilot will not have an adverse impact on capacity.

#### NQX Pilot Report

The Exchange currently makes public on its website the data and analysis previously submitted to the Commission on the NQX Pilot and will continue to make public any data or analysis it submits under the NQX Pilot in the future. The Exchange intends to submit a rule change proposing permanency of the NQX Pilot and would either provide additional data in such proposal or in an annual report. The Exchange would continue to provide the Commission with ongoing data unless and until the NQX Pilot is made permanent or discontinued.

#### Nonstandard Pilot

ISE filed a rule change for the listing and trading on the Exchange, on a twelve month pilot basis, of p.m.-settled options on broad-based indexes with

<sup>4</sup> See Securities Exchange Act Release Nos. 86071 (June 10, 2019), 84 FR 27822 (June 14, 2019) (SR-ISE-2019-18); 87379 (October 22, 2019), 84 FR 57793 (October 28, 2019) (SR-ISE-2019-27); 88683 (April 17, 2020), 85 FR 22768 (April 23, 2020) (SR-ISE-2020-18); 90257 (October 22, 2020), 85 FR 68387 (October 28, 2020) (SR-ISE-2020-33); 91485 (April 6, 2021), 86 FR 19052 (April 12, 2021) (SR-ISE-2021-05); 93448 (October 28, 2021), 86 FR 60717 (November 3, 2021) (SR-ISE-2021-22); and 94632 (April 7, 2022), 87 FR 21940 (SR-ISE-2022-09).

nonstandard expirations dates.<sup>5</sup> The Nonstandard Pilot permits both Weekly Expirations and End of Month ("EOM") expirations similar to those of the a.m.-settled broad-based index options, except that the exercise settlement value of the options subject to the pilot are based on the index value derived from the closing prices of component stocks. On July 29, 2022, the Commission approved a Proposed Rule Change To Permit the Listing and Trading of P.M.-Settled Nasdaq-100 Index Options That Expire on Tuesday or Thursday Under Its Nonstandard Expirations Pilot Program.<sup>6</sup> The Nonstandard Pilot was extended various times with the last extension through November 4, 2022.<sup>7</sup>

Supplementary Material .07(a) to Options 4A, Section 12 provides that the Exchange may open for trading Weekly Expirations on any broad-based index eligible for standard options trading to expire on any Monday, Wednesday, or Friday (other than the third Friday-of-the-month or days that coincide with an EOM expiration). In addition, the Exchange may also open for trading Weekly Expirations on Nasdaq-100 Index options to expire on any Tuesday or Thursday (other than days that coincide with the third Friday-of-the-month or an EOM expiration). Weekly Expirations are subject to all provisions of Options 4A, Section 12 and are treated the same as options on the same underlying index that expire on the third Friday of the expiration month. Unlike the standard monthly options, however, Weekly Expirations are p.m.-settled.

Pursuant to Supplementary Material .07(b) to Options 4A, Section 12 the Exchange may open for trading EOM expirations on any broad-based index eligible for standard options trading to expire on the last trading day of the

<sup>5</sup> See Securities Exchange Act Release No. 82612 (February 1, 2018), 83 FR 5470 (February 7, 2018) (approving SR-ISE-2017-111) (Order Approving a Proposed Rule Change To Establish a Nonstandard Expirations Pilot Program).

<sup>6</sup> See Securities Exchange Act Release No. 95393 (July 29, 2022), 87 FR 47807 (August 4, 2022) (SR-ISE-2022-13) (Order Granting Approval of a Proposed Rule Change To Permit the Listing and Trading of P.M.-Settled Nasdaq-100 Index Options That Expire on Tuesday or Thursday Under Its Nonstandard Expirations Pilot Program).

<sup>7</sup> See Securities Exchange Act Release Nos. 85030 (February 1, 2019), 84 FR 2633 (February 7, 2019) (SR-ISE-2019-01); 85672 (April 17, 2019), 84 FR 16899 (April 23, 2019) (SR-ISE-2019-11); 87380 (October 22, 2019), 84 FR 57786 (October 28, 2019) (SR-ISE-2019-28); 88681 (April 17, 2020), 85 FR 22775 (April 23, 2020) (SR-ISE-2020-17); 90265 (October 23, 2020), 85 FR 68605 (October 29, 2020) (SR-ISE-2020-34); 91486 (April 6, 2021), 86 FR 19048 (April 12, 2021) (SR-ISE-2021-06); 93449 (October 28, 2021), 86 FR 60679 (November 3, 2021) (SR-ISE-2021-23); and 94632 (April 7, 2022), 87 FR 21940 (SR-ISE-2022-09).

month. EOM expirations are subject to all provisions of Options 4A, Section 12 and treated the same as options on the same underlying index that expire on the third Friday of the expiration month. However, the EOM expirations are p.m.-settled.

The Exchange now proposes to amend Supplementary Material .07(c) to Options 4A, Section 12 so that the duration of the Nonstandard Pilot for these nonstandard expirations will be through May 4, 2023. The Exchange continues to have sufficient systems capacity to handle p.m.-settled options on broad-based indexes with nonstandard expirations dates and has not encountered any issues or adverse market effects as a result of listing them. Additionally, there is continued investor interest in these products. The Exchange will continue to make public on its website any data and analysis it submits to the Commission under the Nonstandard Pilot. The Exchange believes that the proposed extension of the Nonstandard Pilot will not have an adverse impact on capacity.

#### Nonstandard Pilot Report

The Exchange intends to submit a rule change proposing permanency of the Nonstandard Pilot and would either provide additional data in such proposal or in an annual report. The Exchange would continue to provide the Commission with ongoing data unless and until the Nonstandard Pilot is made permanent or discontinued. The annual report will contain an analysis of volume, open interest and trading patterns; a monthly analysis of weekly expiration and End of Month Trading Patterns; and a Provisional Analysis of Index Price Volatility and Share Trading Activity. In addition, for series that exceed certain minimum open interest parameters, the annual report will provide analysis of index price volatility and, if needed, share trading activity.<sup>8</sup>

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>9</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>10</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.

<sup>8</sup> See note 5 above.

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

#### NQX Pilot

In particular, the Exchange believes that the NQX Pilot has been successful to date. The Exchange has not encountered any problems with the NQX Pilot. By extending the NQX Pilot, the Exchange believes it will attract order flow to the Exchange, increase the variety of listed options, and provide a valuable hedge tool to retail and other investors. Specifically, the Exchange believes that the NQX Pilot will provide additional trading and hedging opportunities for investors while providing the Commission with data to monitor for and assess any potential for adverse market effects of allowing P.M.-settlement for NQX options, including on the underlying component stocks.

#### Nonstandard Pilot

The Exchange believes the proposed rule change will protect investors and the public interest by providing the Exchange, the Commission and investors the benefit of additional time to analyze nonstandard expiration options. In particular, the Exchange believes that the Nonstandard Pilot has been successful to date. The Exchange has not encountered any problems with the Nonstandard Pilot. By extending the Nonstandard Pilot, investors may continue to benefit from a wider array of investment opportunities. Additionally, both the Exchange and the Commission may continue to monitor the potential for adverse market effects of p.m.-settlement on the market, including the underlying cash equities market, at the expiration of these options.

#### 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 that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change will not impose an undue burden on inter-market competition as this rule change will continue to facilitate the listing and trading of new option products that will enhance competition among market participants, to the benefit of investors and the marketplace. Furthermore, these products could offer a competitive alternative to other existing investment products. Finally, it is possible for other exchanges to develop or license the use of a new or different index to compete with these products and seek Commission approval to list and trade options on such an index.

#### NQX Pilot

NQX options would be available for trading to all market participants and therefore would not impose an undue burden on intra-market competition. The continued listing of the NQX Pilot will enhance competition by providing investors with an additional investment vehicle, in a fully-electronic trading environment, through which investors can gain and hedge exposure to the Nasdaq-100.

#### Nonstandard Pilot

Options with nonstandard expirations would be available for trading to all market participants. The continued listing of the Nonstandard Pilot will enhance competition by providing investors with an additional investment vehicle, in a fully-electronic trading environment, through which investors can gain and hedge exposure to the Nasdaq-100.

#### 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 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 Act<sup>11</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>12</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

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) 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.

change 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-2022-20 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-2022-20. 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 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-2022-20, and should be submitted on or before November 3, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

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**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-96003; File No. SR-CBOE-2022-050]

### Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fees Schedule

October 6, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 26, 2022, Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III 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

Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") proposes to amend its Fees Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange's Office of the Secretary, 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

The Exchange proposes to amend its Fees Schedule to modify the fee for the SPX (and SPXW) Floor Market-Maker Tier Appointment Fee.<sup>3</sup>

By way of background, Exchange Rule 5.50(g)(2) provides that the Exchange may establish one or more types of tier appointments and Exchange Rule 5.50(g)(2)(B) provides such tier appointments are subject to such fees and charges the Exchange may establish. In 2010, the Exchange established the SPX Tier Appointment and adopted an initial fee of \$3,000 per Market-Maker trading permit, per month.<sup>4</sup> The SPX (and SPXW) Tier Appointment fee for Floor Market-Makers currently applies to any Market-Maker that executes any contracts in SPX and/or SPXW on the trading floor.<sup>5</sup> The Exchange now seeks to increase the fee for the SPX/SPXW Floor Market-Maker Tier Appointment from \$3,000 per Market-Maker Floor Trading Permit to \$5,000 per Market-Maker Floor Trading Permit.

In connection with the proposed change, the Exchange also proposes to update Footnote 24 in the Fees Schedule, as well as remove the reference to Footnote 24 in the Market-Maker Tier Appointment Fee Table. By way of background, in June 2020, the Exchange adopted Footnote 24 to describe pricing changes that would apply for the duration of time the Exchange trading floor was being operated in a modified manner in connection with the COVID-19

<sup>3</sup> The Exchange initially filed the proposed fee change, among other changes, on June 1, 2022 (SR-CBOE-2022-026). On June 10, 2022, the Exchange withdrew that filing and submitted SR-CBOE-2022-029. On August 5, 2022, the Exchange withdrew that filing and submitted SR-CBOE-2022-042. On September 26, 2022, the Exchange withdrew that filing and submitted this filing to address the proposed fee change relating to the SPX/SPXW Floor Market-Maker Tier Appointment Fee.

<sup>4</sup> See Securities Exchange Act Release No. 62386 (June 25, 2010), 75 FR 38566 (July 2, 2010) (SR-CBOE-2010-060).

<sup>5</sup> The Exchange notes that the fee is not assessed to a Market-Maker Floor Permit Holder who only executes SPX (including SPXW) options transactions as part of multi-class broad-based index spread transactions. See Cboe Options Fees Schedule, Market-Maker Tier Appointment Fees, Notes.

<sup>13</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.