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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No.* SR - 2017 - * 23
Amendment No. (req. for Amendments *)

Filing by International Securities Exchange

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * ☑ Amendment * ☐ Withdrawal ☐

Section 19(b)(2) * ☐ Section 19(b)(3)(A) * ☑ Section 19(b)(3)(B) * ☐

Rule

☐ 19b-4(f)(1) ☐ 19b-4(f)(4)
☑ 19b-4(f)(2) ☐ 19b-4(f)(5)
☐ 19b-4(f)(3) ☐ 19b-4(f)(6)

Pilot ☐ Extension of Time Period for Commission Action * ☐ Date Expires *

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Section 806(e)(1) * ☐ Section 806(e)(2) * ☐

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934

Section 3C(b)(2) * ☐

Exhibit 2 Sent As Paper Document ☐ Exhibit 3 Sent As Paper Document ☐

Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

A proposal to amend the Exchanges Schedule of Fees.

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * Carla Last Name * Behnfeldt
Title * Associate General Counsel
E-mail * carla.behnfeldt@nasdaq.com
Telephone * (215) 496-5208 Fax

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date 03/10/2017
By Edward S. Knight
(Name *)

(Title *)
Executive Vice President and General Counsel

edward.knight@nasdaq.com

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Required fields are shown with yellow backgrounds and asterisks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information * Add Remove View	The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.
Exhibit 1 - Notice of Proposed Rule Change * Add Remove View	The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO] -xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)
Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies * Add Remove View	The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO] -xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)
Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications Add Remove View Exhibit Sent As Paper Document ☐	Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.
Exhibit 3 - Form, Report, or Questionnaire Add Remove View Exhibit Sent As Paper Document ☐	Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.
Exhibit 4 - Marked Copies Add Remove View	The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.
Exhibit 5 - Proposed Rule Text Add Remove View	The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.
Partial Amendment Add Remove View	If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) The International Securities Exchange, LLC ("ISE" or "Exchange"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] is filing with the Securities and Exchange Commission ("SEC" or "Commission") a proposal to amend the Exchange's Schedule of Fees to: (i) eliminate the Priority Customer complex order rebate for orders in the NASDAQ 100 Index option ("NDX") and in the Mini Nasdaq 100 Index option ("MNX"); (ii) increase the Non-Priority Customer License Surcharge for Index Options for NDX and MNX options, and (iii) waive the Marketing Fees for NDX and MNX, as described further below.

A notice of the proposed rule change for publication in the Federal Register is attached as Exhibit 1. The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors (the "Board") on August 15, 2016. Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

Questions and comments on the proposed rule change may be directed to:

Carla Behnfeldt
Associate General Counsel
Nasdaq, Inc.
(215) 496-5208

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

a. Purpose

The purpose of the proposed rule change is to: (i) eliminate the Priority Customer complex order rebate for orders in NDX and MNX; (ii) increase the Non-Priority Customer License Surcharge for Index Options for NDX and MNX, and (iii) waive marketing fees for NDX and MNX.[3] The Exchange notes that both NDX and MNX are transitioning to be exclusively listed on the Exchange and its affiliated markets in 2017.[4]

Eliminate Rebate for Priority Customer Complex Orders in Non-Select Symbols for Orders in NDX and MNX

Currently, the Exchange provides rebates to Priority Customer[5] complex orders that trade with non-Priority Customer complex orders in the complex order book or trade with quotes and orders on the regular order book.[6] Rebates are tiered based on a member's ADV executed during a given month as follows: 0 to 14,999 contracts ("Tier 1"), 15,000 to 44,999 contracts ("Tier 2"), 45,000 to 59,999 contracts ("Tier 3"), 60,000 to 74,999 contracts ("Tier 4"), 75,000 to 99,999 contracts ("Tier 5"), 100,000 to 124,999

3 The Exchange initially filed the proposed pricing change on March 1, 2017 (SR-ISE-2017-21). On March 10, 2017, the Exchange withdrew that filing and submitted this filing.

4 The Exchange and its affiliates will exclusively list NDX and MNX in the near future upon expiration of open expiries in these products on other markets.

5 A "Priority Customer" is a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s), as defined in ISE Rule 100(a)(37A).

6 These rebates are provided per contract per leg if the order trades with non-Priority Customer orders in the complex order book, or trades with quotes and orders on the regular order book.

contracts (“Tier 6”), 125,000 to 224,999 contracts (“Tier 7”), and 225,000 or more contracts (“Tier 8”). In Non-Select Symbols,[7] including NDX and MNX, the rebate is $0.40 per contract for Tier 1, $0.60 per contract for Tier 2, $0.70 per contract for Tier 3, $0.75 per contract for Tier 4, $0.75 per contract for Tier 5, $0.80 per contract for Tier 6, $0.81 per contract for Tier 7, and $0.85 per contract for Tier 8. The Exchange now proposes to add note 4 to Section II of the Schedule of Fees to provide that no Priority Customer complex order rebates will be paid for orders in NDX or MNX.

Increase Non-Priority Customer License Surcharge for Index Options for NDX and MNX

The purpose of the second proposed change is to raise revenue for the Exchange by increasing the Non-Priority Customer License Surcharge for options on NDX and MNX. Currently, a number of Non-Select Symbols are index options that are traded on the Exchange pursuant to license agreements for which the Exchange charges license surcharges. The Exchange charges the following license surcharges for all orders other than Priority Customer orders: $ 0.10 per contract for options on BKX, and $ 0.22 per contract for options on NDX and MNX. The license surcharge fees, which are charged by the Exchange to defray the licensing costs, are charged in addition to transaction fees. The Exchange is now proposing to amend Section IV.B of the Schedule of Fees to increase the Non-Priority Customer License Surcharge for Index Options for NDX and MNX from $ 0.22 per contract to $ 0.25 per contract.

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[7] “Select Symbols” are options overlying all symbols listed on the ISE that are in the Penny Pilot Program. “Non-Select Symbols” are options overlying all symbols, excluding Select Symbols. NDX and MNX are Non-Select Symbols.

Waive the Marketing Fee for NDX and MNX Options

Currently, the Exchange administers a Marketing Fee program that helps Market Makers establish Marketing Fee arrangements with Electronic Access Members ("EAMs") in exchange for those EAMs routing some or all of their order flow to the Market Maker. This Marketing Fee program is funded through a fee of $ 0.70 per contract, which is paid by ISE Market Makers for each regular Priority Customer contract executed in Non-Select Symbols.[8] The fee is waived in FX Options, Flash Orders, and for Complex Orders in all symbols. The Exchange now proposes to amend Section IV.D of the Schedule of Fees to similarly waive the fee for NDX and MNX options.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[10] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for

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8 The Marketing Fee is rebated proportionately to the members that paid the fee such that on a monthly basis the Marketing Fee fund balance administered by a Primary Market Maker for a Group of options established under Rule 802(b) does not exceed $ 100,000 and the Marketing Fee fund balance administered by a preferenced Competitive Market Maker for such a Group does not exceed $100,000. A preferenced Competitive Market Maker that elects not to administer a fund will not be charged the Marketing Fee. The Exchange assesses an administrative fee of 0.45% on the total amount of the funds collected each month.

9 15 U.S.C. 78f(b).

10 15 U.S.C. 78f(b)(4) and (5).

competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."[11]

Likewise, in NetCoalition v. Securities and Exchange Commission[12] ("NetCoalition") the D.C. Circuit upheld the Commission's use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.[13] As the court emphasized, the Commission "intended in Regulation NMS that 'market forces, rather than regulatory requirements' play a role in determining the market data . . . to be made available to investors and at what cost."[14]

Further, "[n]o one disputes that competition for order flow is 'fierce.' … As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or

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11 Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) ("Regulation NMS Adopting Release").

12 NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

13 See NetCoalition, at 534 - 535.

14 Id. at 537.

otherwise, in the execution of order flow from broker dealers'…."[15] Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

The Exchange notes that the proposed rule changes are reasonable, equitable and not unfairly discriminatory as NDX and MNX transition to exclusively listed products. Similar to other proprietary products, the Exchange seeks to recoup the operational costs[16] for listing proprietary products. Also, pricing by symbol is a common practice on many U.S. options exchanges as a means to incentivize order flow to be sent to an exchange for execution in particular products. Other options exchanges price by symbol.[17]

Eliminate Rebate for Priority Customer Complex Orders in Non-Select Symbols for Orders in NDX and MNX

The Exchange's proposal to eliminate the rebate for Priority Customer complex orders in Non-Select Symbols for orders in NDX and MNX is reasonable because even after elimination of the rebate, Priority Customer complex orders in NDX and MNX will not be assessed any Complex Order transaction fees.[18] By contrast, Public Customer

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15 Id. at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

16 By way of example, in analyzing an obvious error, the Exchange would have additional data points available in establishing a theoretical price for a multiply listed option as compared to a proprietary product, which requires additional analysis and administrative time to comply with Exchange rules to resolve an obvious error.

17 See pricing for RUT on CBOE's Fees Schedule.

18 Further, the Exchange notes that with its products, market participants are offered an opportunity to either transact options overlying NDX and MNX or separately execute options overlying PowerShares QQQ Trust ("QQQ"), an exchange-traded fund that, like MNX and NDX options, is based on the Nasdaq-100 Index.

executions on the C2 Options Exchange in another broad-based index option, the option on the Russell 2000 Index (RUT), are subject to a $0.15 per contract transaction fee.[19]

The Exchange's proposal to eliminate the rebate for Priority Customer complex orders in Non-Select Symbols for orders in NDX and MNX is an equitable allocation and is not unfairly discriminatory because the Exchange will eliminate the rebate for all similarly-situated members.

Increase Non-Priority Customer License Surcharge for Index Options for NDX and MNX

The Exchange believes that its proposal to increase the Non-Priority Customer License Surcharge for Index Options for NDX and MNX is reasonable because it is in line with the options surcharge of $0.25 for transactions in NDX and MNX on NASDAQ PHLX and is in fact lower than the $0.45 C2 Options Exchange surcharge applicable to non-public customer transactions in RUT, which is another broad-based index option and similar proprietary product.[20]

The Exchange believes that its proposal to increase the Non-Priority Customer License Surcharge for Index Options for NDX and MNX is an equitable allocation and is not unfairly discriminatory because the Exchange will apply the increase to all similarly-

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Offering products such as QQQ provides market participants with a variety of choices in selecting the product they desire as alternatives to NDX and MNX. By comparison, a market participant may trade options overlying RUT or separately the market participant has the choice of trading iShares Russell 2000 Index Fund ("IWM") Exchange-Traded Fund Shares options, which are also multiply listed. When exchanges are able to recoup costs associated with offering proprietary products, it incentivizes growth and competition for the innovation of additional products.

[19] See C2 Options Exchange, Incorporated Fees Schedule, Section 1.C.

[20] See C2 Options Exchange, Incorporated Fees Schedule, Section 1.D.

situated members. The Exchange believes it is equitable and not unfairly discriminatory to assess this increased surcharge on all participants except Priority Customers because the Exchange seeks to encourage Priority Customer order flow and the liquidity such order flow brings to the marketplace, which in turn benefits all market participants.

Waive the Marketing Fee for NDX and MNX

The Exchange believes that its proposal to waive the Marketing Fee for NDX and MNX is reasonable because the purpose of a Marketing Fee is to attract order flow to the Exchange. Because NDX and MNX are no longer widely traded on many competing options exchanges, a Marketing Fee whose purpose is to attract order flow to the Exchange is no longer necessary to attract order flow to ISE.

The Exchange believes that its proposal to waive the Marketing Fee for NDX and MNX is an equitable allocation and is not unfairly discriminatory because the Exchange will waive the Marketing Fee for all similarly-situated members.

4. 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. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

The proposed amendments to the fees will eliminate the rebate for Priority Customer complex orders in Non-Select Symbols for orders in NDX and MNX, increase the Non-Priority Customer License Surcharge for Index Options for NDX and MNX, and waive the Marketing Fee for NDX and MNX. In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets or will impose any inter-market burden on competition for the reasons stated above.[21]

In terms of intra-market competition, the elimination of the rebate for Priority Customer complex orders for orders in NDX and MNX will result in total fees for orders in NDX and MNX becoming more uniform across all classes of market participants, while still permitting Priority Customers to transact in NDX and MNX free of any transaction charge. Removing the rebate will also enhance the Exchange's ability to offer other rebates or reduced fees that could incentivize behavior that would enhance market quality on the Exchange, which would benefit all members.[22] Likewise, the increase in the Non-Priority Customer License Surcharge for Index Options for NDX and MNX will impact all Non-Priority Customers equally, and will raise revenue for the Exchange without negatively impacting Priority Customers whose orders may enhance market

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[21] See footnote 18 above.

[22] The Exchange offers rebates to market participants to encourage certain behavior on the Exchange such as adding more liquidity in a certain product.

quality for all Exchange members. Finally, the waiver of the Marketing Fee for NDX and MNX will reduce an existing disparity between ISE Market Makers, who currently are subject to the fee, and other Exchange members.

5. 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.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Pursuant to Section 19(b)(3)(A)(ii) of the Act,[23] the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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.

7. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

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[23] 15 U.S.C. 78s(b)(3)(A)(ii).

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

1. Notice of Proposed Rule Change for publication in the Federal Register.

5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. ; File No. SR-ISE-2017-23)

March __, 2017

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Exchange's Schedule of Fees

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 March 10, 2017, the International Securities Exchange, LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "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

The Exchange proposes to amend the Schedule of Fees to: (i) eliminate the Priority Customer complex order rebate for orders in the NASDAQ 100 Index option ("NDX") and in the Mini Nasdaq 100 Index option ("MNX"); (ii) increase the Non-Priority Customer License Surcharge for Index Options for NDX and MNX options, and (iii) waive the Marketing Fees for NDX and MNX, as described further below.

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

The text of the proposed rule change is available on the Exchange's Website at www.ise.com, 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

The purpose of the proposed rule change is to: (i) eliminate the Priority Customer complex order rebate for orders in NDX and MNX; (ii) increase the Non-Priority Customer License Surcharge for Index Options for NDX and MNX, and (iii) waive marketing fees for NDX and MNX.[3] The Exchange notes that both NDX and MNX are transitioning to be exclusively listed on the Exchange and its affiliated markets in 2017.[4]

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3 The Exchange initially filed the proposed pricing change on March 1, 2017 (SR-ISE-2017-21). On March 10, 2017, the Exchange withdrew that filing and submitted this filing.

4 The Exchange and its affiliates will exclusively list NDX and MNX in the near future upon expiration of open expiries in these products on other markets.

Eliminate Rebate for Priority Customer Complex Orders in Non-Select Symbols for Orders in NDX and MNX

Currently, the Exchange provides rebates to Priority Customer[5] complex orders that trade with non-Priority Customer complex orders in the complex order book or trade with quotes and orders on the regular order book.[6] Rebates are tiered based on a member's ADV executed during a given month as follows: 0 to 14,999 contracts ("Tier 1"), 15,000 to 44,999 contracts ("Tier 2"), 45,000 to 59,999 contracts ("Tier 3"), 60,000 to 74,999 contracts ("Tier 4"), 75,000 to 99,999 contracts ("Tier 5"), 100,000 to 124,999 contracts ("Tier 6"), 125,000 to 224,999 contracts ("Tier 7"), and 225,000 or more contracts ("Tier 8"). In Non-Select Symbols,[7] including NDX and MNX, the rebate is $0.40 per contract for Tier 1, $0.60 per contract for Tier 2, $0.70 per contract for Tier 3, $0.75 per contract for Tier 4, $0.75 per contract for Tier 5, $0.80 per contract for Tier 6, $0.81 per contract for Tier 7, and $0.85 per contract for Tier 8. The Exchange now proposes to add note 4 to Section II of the Schedule of Fees to provide that no Priority Customer complex order rebates will be paid for orders in NDX or MNX.

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5 A "Priority Customer" is a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s), as defined in ISE Rule 100(a)(37A).

6 These rebates are provided per contract per leg if the order trades with non-Priority Customer orders in the complex order book, or trades with quotes and orders on the regular order book.

7 "Select Symbols" are options overlying all symbols listed on the ISE that are in the Penny Pilot Program. "Non-Select Symbols" are options overlying all symbols, excluding Select Symbols. NDX and MNX are Non-Select Symbols.

Increase Non-Priority Customer License Surcharge for Index Options for NDX and MNX

The purpose of the second proposed change is to raise revenue for the Exchange by increasing the Non-Priority Customer License Surcharge for options on NDX and MNX. Currently, a number of Non-Select Symbols are index options that are traded on the Exchange pursuant to license agreements for which the Exchange charges license surcharges. The Exchange charges the following license surcharges for all orders other than Priority Customer orders: $ 0.10 per contract for options on BKX, and $ 0.22 per contract for options on NDX and MNX. The license surcharge fees, which are charged by the Exchange to defray the licensing costs, are charged in addition to transaction fees. The Exchange is now proposing to amend Section IV.B of the Schedule of Fees to increase the Non-Priority Customer License Surcharge for Index Options for NDX and MNX from $ 0.22 per contract to $ 0.25 per contract.

Waive the Marketing Fee for NDX and MNX Options

Currently, the Exchange administers a Marketing Fee program that helps Market Makers establish Marketing Fee arrangements with Electronic Access Members ("EAMs") in exchange for those EAMs routing some or all of their order flow to the Market Maker. This Marketing Fee program is funded through a fee of $ 0.70 per contract, which is paid by ISE Market Makers for each regular Priority Customer contract executed in Non-Select Symbols.[8] The fee is waived in FX Options, Flash Orders, and

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[8] The Marketing Fee is rebated proportionately to the members that paid the fee such that on a monthly basis the Marketing Fee fund balance administered by a Primary Market Maker for a Group of options established under Rule 802(b) does not exceed $ 100,000 and the Marketing Fee fund balance administered by a preferenced Competitive Market Maker for such a Group does not exceed $100,000. A preferenced Competitive Market Maker that elects not to administer a fund will not be charged the Marketing Fee. The Exchange assesses an

for Complex Orders in all symbols. The Exchange now proposes to amend Section IV.D of the Schedule of Fees to similarly waive the fee for NDX and MNX options.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[10] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."[11]

Likewise, in NetCoalition v. Securities and Exchange Commission[12] ("NetCoalition") the D.C. Circuit upheld the Commission's use of a market-based

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administrative fee of 0.45% on the total amount of the funds collected each month.

9 15 U.S.C. 78f(b).

10 15 U.S.C. 78f(b)(4) and (5).

11 Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) ("Regulation NMS Adopting Release").

12 NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.[13] As the court emphasized, the Commission "intended in Regulation NMS that 'market forces, rather than regulatory requirements' play a role in determining the market data . . . to be made available to investors and at what cost."[14]

Further, "[n]o one disputes that competition for order flow is 'fierce.' … As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'…."[15] Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

The Exchange notes that the proposed rule changes are reasonable, equitable and not unfairly discriminatory as NDX and MNX transition to exclusively listed products. Similar to other proprietary products, the Exchange seeks to recoup the operational costs[16] for listing proprietary products. Also, pricing by symbol is a common practice on

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[13] See NetCoalition, at 534 - 535.

[14] Id. at 537.

[15] Id. at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

[16] By way of example, in analyzing an obvious error, the Exchange would have additional data points available in establishing a theoretical price for a multiply listed option as compared to a proprietary product, which requires additional analysis and administrative time to comply with Exchange rules to resolve an obvious error.

many U.S. options exchanges as a means to incentivize order flow to be sent to an exchange for execution in particular products. Other options exchanges price by symbol.[17]

Eliminate Rebate for Priority Customer Complex Orders in Non-Select Symbols for Orders in NDX and MNX

The Exchange's proposal to eliminate the rebate for Priority Customer complex orders in Non-Select Symbols for orders in NDX and MNX is reasonable because even after elimination of the rebate, Priority Customer complex orders in NDX and MNX will not be assessed any Complex Order transaction fees.[18] By contrast, Public Customer executions on the C2 Options Exchange in another broad-based index option, the option on the Russell 2000 Index (RUT), are subject to a $0.15 per contract transaction fee.[19]

The Exchange's proposal to eliminate the rebate for Priority Customer complex orders in Non-Select Symbols for orders in NDX and MNX is an equitable allocation and is not unfairly discriminatory because the Exchange will eliminate the rebate for all similarly-situated members.

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17 See pricing for RUT on CBOE's Fees Schedule.

18 Further, the Exchange notes that with its products, market participants are offered an opportunity to either transact options overlying NDX and MNX or separately execute options overlying PowerShares QQQ Trust ("QQQ"), an exchange-traded fund that, like MNX and NDX options, is based on the Nasdaq-100 Index. Offering products such as QQQ provides market participants with a variety of choices in selecting the product they desire as alternatives to NDX and MNX. By comparison, a market participant may trade options overlying RUT or separately the market participant has the choice of trading iShares Russell 2000 Index Fund ("IWM") Exchange-Traded Fund Shares options, which are also multiply listed. When exchanges are able to recoup costs associated with offering proprietary products, it incentivizes growth and competition for the innovation of additional products.

19 See C2 Options Exchange, Incorporated Fees Schedule, Section 1.C.

Increase Non-Priority Customer License Surcharge for Index Options for NDX and MNX

The Exchange believes that its proposal to increase the Non-Priority Customer License Surcharge for Index Options for NDX and MNX is reasonable because it is in line with the options surcharge of $0.25 for transactions in NDX and MNX on NASDAQ PHLX and is in fact lower than the $0.45 C2 Options Exchange surcharge applicable to non-public customer transactions in RUT, which is another broad-based index option and similar proprietary product.[20]

The Exchange believes that its proposal to increase the Non-Priority Customer License Surcharge for Index Options for NDX and MNX is an equitable allocation and is not unfairly discriminatory because the Exchange will apply the increase to all similarly-situated members. The Exchange believes it is equitable and not unfairly discriminatory to assess this increased surcharge on all participants except Priority Customers because the Exchange seeks to encourage Priority Customer order flow and the liquidity such order flow brings to the marketplace, which in turn benefits all market participants.

Waive the Marketing Fee for NDX and MNX

The Exchange believes that its proposal to waive the Marketing Fee for NDX and MNX is reasonable because the purpose of a Marketing Fee is to attract order flow to the Exchange. Because NDX and MNX are no longer widely traded on many competing options exchanges, a Marketing Fee whose purpose is to attract order flow to the Exchange is no longer necessary to attract order flow to ISE.

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20 See C2 Options Exchange, Incorporated Fees Schedule, Section 1.D.

The Exchange believes that its proposal to waive the Marketing Fee for NDX and MNX is an equitable allocation and is not unfairly discriminatory because the Exchange will waive the Marketing Fee for all similarly-situated members.

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. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

The proposed amendments to the fees will eliminate the rebate for Priority Customer complex orders in Non-Select Symbols for orders in NDX and MNX, increase the Non-Priority Customer License Surcharge for Index Options for NDX and MNX, and waive the Marketing Fee for NDX and MNX. In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets or will impose any inter-market burden on competition for the reasons stated above.[21]

In terms of intra-market competition, the elimination of the rebate for Priority Customer complex orders for orders in NDX and MNX will result in total fees for orders in NDX and MNX becoming more uniform across all classes of market participants, while still permitting Priority Customers to transact in NDX and MNX free of any transaction charge. Removing the rebate will also enhance the Exchange's ability to offer other rebates or reduced fees that could incentivize behavior that would enhance market quality on the Exchange, which would benefit all members.[22] Likewise, the increase in the Non-Priority Customer License Surcharge for Index Options for NDX and MNX will impact all Non-Priority Customers equally, and will raise revenue for the Exchange without negatively impacting Priority Customers whose orders may enhance market quality for all Exchange members. Finally, the waiver of the Marketing Fee for NDX and MNX will reduce an existing disparity between ISE Market Makers, who currently are subject to the fee, and other Exchange members.

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.

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21 See footnote 18 above.

22 The Exchange offers rebates to market participants to encourage certain behavior on the Exchange such as adding more liquidity in a certain product.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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 e-mail to rule-comments@sec.gov. Please include File Number SR-ISE-2017-23 on the subject line.

Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-ISE-2017-23. This file number should be included on the subject line if e-mail is used. To help the Commission process

23 15 U.S.C. 78s(b)(3)(A)(ii).

and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-ISE-2017-23 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]

Robert W. Errett
Deputy Secretary

[24] 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Deleted text is [bracketed]. New text is underlined.

INTERNATIONAL SECURITIES EXCHANGE RULES

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II. Complex Order Fees and Rebates

Rebates					
Market Participant	**Rebate for Select Symbols[1]**	**Rebate for Non-Select Symbols[1][4]**	**PIM Break-up Rebate for Select Symbols[2]**	**PIM Break-up Rebate for Non-Select Symbols[2]**	**Facilitation and Solicitation Break-up Rebate for Select Symbols[2]**
Market Maker	N/A	N/A	N/A	N/A	N/A
Non-ISE Market Maker (FarMM)	N/A	N/A	($0.35)	($0.80)	($0.15)
Firm Proprietary / Broker-Dealer	N/A	N/A	($0.35)	($0.80)	($0.15)
Professional Customer	N/A	N/A	($0.35)	($0.80)	($0.15)
Priority Customer Complex ADV 0-14,999[7][13]	($0.26)	($0.40)	($0.35)	($0.80)	($0.15)
Priority Customer Complex ADV 15,000-44,999[7][13]	($0.30)	($0.60)	($0.35)	($0.80)	($0.15)
Priority Customer Complex ADV 45,000-59,999[7][13]	($0.36)	($0.70)	($0.35)	($0.80)	($0.15)
Priority Customer Complex ADV 60,000-74,999[7][13]	($0.41)	($0.75)	($0.35)	($0.80)	($0.15)
Priority Customer Complex ADV 75,000-99,999[7][13]	($0.42)	($0.75)	($0.35)	($0.80)	($0.15)
Priority Customer Complex ADV 100,000-124,999[7][13]	($0.44)	($0.80)	($0.35)	($0.80)	($0.15)
Priority Customer Complex ADV 125,000-224,999[7][13]	($0.46)	($0.81)	($0.35)	($0.80)	($0.15)
Priority Customer Complex ADV 225,000+[7][13]	($0.49)	($0.85)	($0.35)	($0.80)	($0.15)

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4. [Reserved.]No Priority Customer complex order rebates will be paid for orders in NDX or MNX.

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IV. Other Options Fees and Rebates

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B. Non-Priority Customer License Surcharge for Index Options

Symbols	Fee
BKX	$0.10
NDX, MNX	$[0.22]0.25

* * * * *

D. Marketing Fee

Symbols	Fee
Non-Select Symbols	$0.70

- Marketing fees apply to ISE Market Makers for each Regular Priority Customer contract executed except as noted below.
- Marketing fees do not apply to ISE Market Makers for each Regular Priority Customer contract executed in Select Symbols.
- Marketing fees are waived FX Options, NDX, MNX, Flash Orders and for Complex Orders in all symbols.
- The marketing fee will be rebated proportionately to the members that paid the fee such that on a monthly basis the marketing fee fund balance administered by a Primary Market Maker for a Group of options established under Rule 802(b) does not exceed $100,000 and the marketing fee fund balance administered by a preferenced Competitive Market Maker for such a Group does not exceed $100,000. A preferenced Competitive Market Maker that elects not to administer a fund will not be charged the marketing fee. The Exchange assesses an administrative fee of .45% on the total amount of the funds collected each month.

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