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

File No.* SR - 2020 - * 06
Amendment No. (req. for Amendments *)

Filing by Nasdaq ISE, LLC

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 Pricing Schedule at Options 7

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 * Sun Last Name * Kim

Title * Associate General Counsel

E-mail * sun.kim@nasdaq.com

Telephone * (212) 231-5106 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 02/12/2020

By John Zecca

(Name *)

(Title *)

EVP & Chief Legal Counsel

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.

john.zecca@nasdaq.com

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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) Nasdaq ISE, 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 Pricing Schedule at Options 7, 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 September 25, 2019. 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:

Sun Kim
Associate General Counsel
Nasdaq, Inc.
212-231-5106

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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 amend the Exchange's Pricing Schedule at Options 7 with the objective of attracting additional volume to the Exchange in Non-Select Symbols,[3] where the Exchange has seen less activity than it has in Select Symbols.[4] Each change is described in detail below.

The Exchange initially filed the proposed rule change on February 3, 2020 (SR-ISE-2020-03). On February 12, 2020, the Exchange withdrew that filing and submitted this filing.

Marketing Fee

By way of background, the Exchange administers a marketing fee program that helps Market Makers[5] 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.[6] This program is funded through a fee of $0.70 per contract, which

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3 "Non-Select Symbols" are options overlying all symbols excluding Select Symbols.

4 "Select Symbols" are options overlying all symbols listed on the Exchange that are in the Penny Pilot Program.

5 The term "Market Makers" refers to "Competitive Market Makers" and "Primary Market Makers" collectively. See Options 1, Section 1(a)(21).

6 The marketing fee is rebated proportionally to the Members that paid the fee such that on a monthly basis the market fee fund balance administered by the Primary Market Maker for a Group of options established under Options 2, Section 3(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

is paid by the Market Maker for each regular Priority Customer[7] contract executed in Non-Select Symbols.[8]

In connection with the proposed fee changes to the regular Non-Select Symbol pricing schedule described below, the Exchange proposes to set this marketing fee to $0.00 per contract. The Exchange believes that the proposed fee change will ensure that the total fees paid by Market Makers for regular executions in Non-Select Symbols will remain at a level the Exchange believes is appropriate. The Exchange also proposes in Options 7, Section 6.E to add language that makes clear no marketing fees will be charged with the proposed changes. In particular, the Exchange will add that no marketing fees are charged for Select and Non-Select Symbols. If the Exchange determines to charge a marketing fee in the future, it will do so pursuant to a rule filing.

Non-Select Regular Order Pricing

As set forth in Options 7, Section 3, the Exchange currently charges the following transaction fees for regular orders in Non-Select Symbols (excluding index options):[9] $0.25 per contract for Market Maker orders, $0.20 per contract for Market Maker orders

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administrative fee of .45% on the total amount of the funds collected each month. See Options 7, Section 6.E.

7 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 Nasdaq ISE Options 1, Section 1(a)(37).

8 The Exchange does not charge Market Makers a marketing fee for regular Priority Customer contracts in Select Symbols. Furthermore, the marketing fee is currently waived for NDX, NQX, MNX, Flash Orders and for Complex Orders in all symbols.

9 Specifically, for all executions in regular NDX and NQX orders, the Exchange charges the applicable index options fees in Options 7, Section 5 instead.

sent by EAMs, and $0.72 per contract for Non-Nasdaq ISE Market Maker,[10] Firm Proprietary[11] / Broker-Dealer,[12] and Professional Customer[13] orders. The Exchange applies the foregoing fees to regular transactions regardless of whether the order adds or removes liquidity on ISE. The Exchange currently does not charge a fee for regular Priority Customer orders in Non-Select Symbols.

The Exchange now proposes to replace the existing fee structure with a maker/taker pricing model where all market participants (except Priority Customers) will be assessed a uniform per contract "maker" fee for Non-Select Symbol executions that add liquidity on the Exchange, and a separate per contract "taker" fee for Non-Select Symbol executions that remove liquidity.[14] Generally speaking, the proposed maker fees will be slightly lower than the proposed taker fees in order to incentivize Members to increase their liquidity adding activity in Non-Select Symbols. The Exchange also proposes to charge all market participants higher taker fees for trades executed against Priority Customer Orders. The Exchange further proposes to provide a significant maker

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10 A "Non-Nasdaq ISE Market Maker" is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934, as amended, registered in the same options class on another options exchange.

11 A "Firm Proprietary" order is an order submitted by a member for its own proprietary account.

12 A "Broker-Dealer" order is an order submitted by a member for a broker-dealer account that is not its own proprietary account.

13 A "Professional Customer" is a person or entity that is not a broker/dealer and is not a Priority Customer.

14 As discussed later in this filing, the Exchange will also introduce a Market Maker Plus program for Non-Select Symbols whereby qualifying Market Makers would receive a discounted fee or rebate in lieu of paying the proposed maker fee if they meet the proposed tier threshold requirements.

rebate for Priority Customer orders in Non-Select Symbols, and to continue assessing no taker fees for such orders.

In light of the proposed changes to charge consistent maker/taker fees across all non-Priority Customer orders, the Exchange proposes to remove the separate pricing for Market Maker orders sent by EAMs from the Non-Select Symbol pricing schedule in Options 7, Section 3, and instead specify that the Market Maker fees in Non-Select Symbols will also apply to the Market Maker orders sent by EAMs.[15] With this change, the Exchange also proposes to reduce the current fee assessed to Market Makers for Crossing Orders[16] (except PIM orders) from $0.25 to $0.20 per contract, which would align this fee with the fee currently charged to Market Maker orders sent by EAMs, and to all other non-Priority Customer orders. The Exchange currently charges Market Makers (including Market Maker orders sent by EAMs) the same fee for PIM orders and for Responses to Crossing Orders,[17] and those fees will remain unchanged with this proposal.

Accordingly, the new Non-Select Symbol pricing in Options 7, Section 3 will be as follows:

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15 This is similar to the approach for Select Symbols today. See Options 7, Section 3, note 8.

16 A "Crossing Order" is an order executed in the Exchange's Facilitation Mechanism, Solicited Order Mechanism, Price Improvement Mechanism (PIM) or submitted as a Qualified Contingent Cross order. For purposes of the Pricing Schedule, orders executed in the Block Order Mechanism are also considered Crossing Orders.

17 "Responses to Crossing Order" is any contra-side interest submitted after the commencement of an auction in the Exchange's Facilitation Mechanism, Solicited Order Mechanism, Block Order Mechanism or PIM.

Market Participant	Maker Rebate / Fee	Taker Fee	Fee for Crossing Orders Except PIM Orders	Fee for PIM Orders	Fee for Responses to Crossing Orders Except PIM Orders	Fee for Responses to PIM Orders
Market Maker	$0.70	$0.72	$0.20	$0.10	$0.50	$0.35
Non-Nasdaq ISE Market Maker (FarMM)	$0.70	$0.72	$0.20	$0.10	$0.50	$0.35
Firm Proprietary / Broker-Dealer	$0.70	$0.72	$0.20	$0.10	$0.50	$0.35
Professional Customer	$0.70	$0.72	$0.20	$0.10	$0.50	$0.35
Priority Customer	($0.86)	$0.00	$0.00	$0.00	$0.50	$0.35

As noted above, the proposed taker fees set forth in the table will apply to orders that trade against non-Priority Customer orders. When trading against Priority Customer orders, the Exchange proposes to charge a higher taker fee. Specifically, non-Priority Customer orders will be charged a taker fee of $1.10 per contract for trades executed against a Priority Customer. Priority Customer orders will be charged a taker fee of $0.86 per contract for trades executed against a Priority Customer.[18]

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18 See proposed Options 7, Section 3, note 3.

As it relates to the new Priority Customer maker rebate, the Exchange also proposes to offer Members an additional rebate of $0.14 per contract if they execute more than 0.06% of Regular Order Non-Select Symbol Priority Customer Volume (excluding Crossing Orders and Responses to Crossing Orders) calculated as a percentage of Customer Total Consolidated Volume[19] per day in a given month.[20] The Exchange notes that the proposed volume calculation includes all regular order Priority Customer volume that adds or removes liquidity in Non-Select Symbols on the Exchange, except for volume executed as Crossing Orders and Responses to Crossing Orders. Thus, Members that transact in greater Non-Select Symbol Priority Customer volume on the Exchange (whether by adding or removing liquidity) may be eligible to receive rebates up to $1.00 per contract on their Priority Customers regular orders in Non-Select Symbols that add liquidity to ISE.

Lastly, the Exchange proposes to stipulate that for Priority Customer orders adding liquidity in Non-Select Symbols, there will be no fee charged or rebate provided when trading against Priority Customer complex orders that leg into the regular order book.[21] Today, the Exchange does not charge any fee to Priority Customer complex orders in Non-Select Symbols that leg into the regular market and trade with resting interest on the regular order book, which may include resting Priority Customer orders. As such, the Exchange believes it is appropriate to not charge a fee or provide a rebate to

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19 "Customer Total Consolidated Volume" means the total national volume cleared at The Options Clearing Corporation in the Customer range in equity and ETF options in that month.

20 See proposed Options 7, Section 3, note 15.

21 See proposed Options 7, Section 3, note 18.

a Non-Select Symbol Priority Customer order resting on the regular order book when the Non-Select Symbol Priority Customer order legs out of the complex order book and interacts with such interest.

Market Maker Plus in Non-Select Symbols

The Exchange currently operates a Market Maker Plus program for regular orders in Select Symbols that provides tiered rebates to Market Makers based on time spent quoting at the national best bid or offer (“NBBO”).[22] This program is designed to reward Market Makers that contribute to market quality by maintaining tight markets in Select Symbols. Market Makers are evaluated each trading day for the percentage of time spent on the NBBO for qualifying series that expire in two successive thirty calendar day periods beginning on that trading day. A Market Maker Plus is a Market Maker who is on the NBBO a specified percentage of the time on average for the month based on daily performance in the qualifying series for each of the two successive periods described above.[23] If a Market Maker would qualify for a different Market Maker Plus tier in each of the two successive periods described above, then the lower of the two Market Maker Plus tier rebates shall apply to all contracts.[24] A Market Maker's worst quoting day each

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22 See Options 7, Section 3, note 5.

23 Qualifying series are series trading between $0.03 and $3.00 (for options whose underlying stock's previous trading day's last sale price was less than or equal to $100) and between $0.10 and $3.00 (for options whose underlying stock's previous trading day's last sale price was greater than $100) in premium.

24 Market Makers may enter quotes in a symbol using one or more unique, exchange assigned identifiers - i.e., badge/suffix combinations. Market Maker Plus status is calculated independently based on quotes entered in a symbol for each of the Market Maker's badge/suffix combinations, and the highest tier achieved for any badge/suffix combination quoting that symbol applies to executions across all badge/suffix combinations that the member uses to trade in that symbol. Only

month for each of the two successive periods described above, on a per symbol basis, will be excluded in calculating whether a Market Maker qualifies for this rebate. A Market Maker who qualifies for Market Maker Plus Tiers 2 or higher in at least four of the previous six months will be eligible to receive a reduced Tier 2 rebate in a given month where the Market Maker does not qualify for any Market Maker Plus tiers. This rebate will be the applicable Tier 2 rebate reduced by $0.08 per contract.

The Exchange believes that the Market Maker Plus program has been successful overall in encouraging better market quality and making the Exchange a more attractive market for Select Symbols. Accordingly, the Exchange proposes to replicate this success for Non-Select Symbols by introducing a Market Maker Plus program with substantially similar qualifications in order to promote and encourage liquidity in those particular symbols. Specifically, Market Makers that achieve Market Maker Plus Tiers 1-3 as proposed below for executions in Non-Select Symbols (excluding index options) will be assessed the following maker fee or rebate instead of paying the $0.70 per contract maker fee as proposed above:[25]

Market Maker Plus Tier (Specified Percentage)	Maker Fee / Rebate
Tier 1 (80% to less than 90%)	$0.50
Tier 2 (90% to less than 98%)	$0.30

badge/suffix combinations quoting a minimum of ten trading days within the month will be used to determine whether the Market Maker Plus status has been met and the specific tier to be applied to the Market Maker's performance for that month.

25 As with all Non-Select Symbol pricing in Options 7, Section 3, the proposed Market Maker Plus program will not apply to NDX and NQX options, and the Exchange will charge the applicable index options fees in Options 7, Section 5 instead.

Tier 3 (98% or greater)	($0.40)

The Market Maker Plus Tier 3 rebate will be provided if the qualifying Market Maker trades against non-Priority Customer orders. Qualifying Market Makers that trade against Priority Customer orders will be charged a Market Maker Plus Tier 3 fee of $0.10 per contract instead of receiving the Tier 3 rebate.[26]

The Exchange also proposes to amend the existing Market Maker Plus provisions throughout to provide that Market Makers that meet these qualifications will be assessed the applicable fee or rebate. Lastly, the Exchange proposes to amend the language around the reduced Tier 2 incentive currently provided to qualifying Market Makers in Select Symbols, and expand these provisions to cover the proposed fees in the Non-Select Market Maker Plus program. The Exchange proposes to specify that for Select Symbols, this rebate will continue to be the applicable Tier 2 rebate reduced by $0.08 per contract. For Non-Select Symbols, this fee will be the Tier 2 fee increased by $0.08 per contract.

Market Maker Discount Tiers in Non-Select Symbols

Today, as set forth in Options 7, Section 6.D, Market Makers that execute a monthly volume of 250,000 contracts or more in regular Non-Select Symbol orders are entitled to a discounted rate of $0.20 per contract instead of paying the regular $0.25 per contract fee. The Market Maker discount tiers were originally adopted to incentivize greater Market Maker activity in Non-Select Symbols. With the introduction of the new Market Maker Plus program for Non-Select Symbols as described above, the Exchange now proposes to eliminate the Market Maker discount tiers.

26 See proposed Options 7, Section 3, note 6.

Flash Orders

With the introduction of the maker/taker fee structure proposed above for Non-Select Symbols, the Exchange proposes to amend how Flash Orders will be charged under this proposal. By way of background, a "Flash Order" is an order that is exposed at the NBBO by the Exchange to all Members for execution, as provided under Supplementary Material .02 to Options 5, Section 2. Today, Flash Orders are assessed the applicable taker fee for the initiation of a Flash Order and the applicable maker rebate (only for Market Makers that qualify for Market Maker Plus) or maker fee for responses to the Flash Order. Thus, for the initiation of a Flash Order in Select Symbols, the Exchange currently assesses a taker fee of $0.45 per contract for Market Maker orders (including Market Maker orders sent by an EAM), $0.46 per contract for all other non-Priority Customer orders, and $0.41 per contract for Priority Customer orders. For responses to a Flash Order in Select Symbols, the Exchange currently assesses a maker fee of $0.11 per contract for all non-Priority Customer orders and no fee for Priority Customer orders.[27] As it relates to Flash Orders in Non-Select Symbols, because the Exchange does not currently differentiate between maker and taker fees for Non-Select Symbol executions, Members today are charged the same fee for initiating and responding to a Flash Order. Specifically, the fee is $0.25 per contract for Market Maker

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27 In addition, the maker fee is currently $0.11 for Market Makers, except that (i) Market Makers that qualify for Market Maker Plus would not pay this fee if they meet the applicable tier thresholds set forth in note 5 of Options 7, Section 3, and would instead receive a rebate based on the Market Maker Plus tier for which they qualify; (ii) no fee will be charged or rebate provided when trading against non-Priority Customer complex orders that leg into the regular order book; and (iii) a $0.15 per contract would apply instead of the $0.11 per contract maker fee or applicable Market Maker Plus rebate when trading against Priority Customer complex orders that leg into the regular order book.

orders, $0.20 per contract for Market Maker orders sent by EAMs, $0.72 per contract for all other non-Priority Customer orders, and $0.00 per contract for Priority Customer orders. In addition to the aforementioned fees and rebates, the Exchange also pays a credit of $0.05 per contract to a market participant that responds to a Flash Order in Select or Non-Select Symbols which executes against a Priority Customer.

With the introduction of the maker/taker fee structure proposed above for Non-Select Symbols, the Exchange now proposes to charge the applicable taker fee for initiating Flash Orders in Non-Select Symbols. The fee for initiating Flash Orders will therefore increase from $0.25 to $0.72 per contract for Market Makers and from $0.20 to $0.72 for Market Maker orders sent by EAMs.[28] The initiating fee, as proposed, will remain the same for all other market participants, ($0.72 per contract for all other non-Priority Customer orders, and $0.00 per contract for Priority Customer orders).

In addition, the Exchange proposes to charge all non-Priority Customer responses to Flash Orders in Non-Select Symbols a flat fee of $0.25 per contract, and not charge a fee for Priority Customer responses. The flash response fee will therefore remain the same for Market Maker orders, except Market Maker orders sent by EAMs will see an increase from $0.20 to $0.25 per contract. For all other non-Priority Customers, the flash response fee in Non-Select Symbols will decrease from $0.72 per contract to $0.25 per contract. Lastly, for Priority Customers, the flash response fee will remain the same at $0.00 per contract.

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28 As discussed earlier in this filing, the Exchange is proposing to remove the distinction between Non-Select Symbol pricing for Market Makers and for Market Maker orders sent by EAMs.

The Exchange will continue to charge the applicable Select Symbol taker fee for initiating Flash Orders in those symbols, which taker fees are not changing under this proposal. Similarly, the Exchange will continue to charge the applicable Select Symbol maker rebate or fee for responses to Flash Orders in those symbols, which maker pricing will remain the same under this proposal. Accordingly, the Exchange proposes to amend the existing Flash Order provisions to differentiate pricing for Select Symbols and Non-Select Symbols where applicable.[29] Lastly, the Exchange proposes to remove the $0.05 credit discussed above for both Select and Non-Select Symbols.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[30] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[31] 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 Exchange's proposed changes to its Pricing Schedule are consistent with the Act in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has

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29 See proposed Options 7, Section 3, note 17. The Exchange will also make technical changes to replace the "Section I" references therein and to the definition of Flash Order in Options 7, Section 1 to "Section 3." The Exchange will also amend the first two sentences of note 17 to correct a typo and for better readability.

30 15 U.S.C. 78f(b).

31 15 U.S.C. 78f(b)(4) and (5).

long been recognized by the courts. In NetCoalition v. Securities and Exchange Commission, the D.C. Circuit stated as follows: "[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'…."[32]

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."[33]

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for equity security transaction services. The Exchange is only one of sixteen options exchanges to which market participants may direct their order flow. Within this environment, market

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32 NetCoalition v. SEC, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

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

participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. Within the foregoing context, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

Marketing Fee

The Exchange believes that it is reasonable to set the marketing fee to $0.00 per contract because the Exchange has proposed changes to its Non-Select Symbol pricing that will result in Market Makers paying higher maker/taker fees than today.[34] Eliminating the marketing fee will keep total execution costs down when Market Makers trade against regular Priority Customer orders in Non-Select Symbols. The Exchange also believes that the proposed fee change is equitable and not unfairly discriminatory as no Market Makers would be charged a marketing fee under this proposal. The Exchange also believes that it is reasonable, equitable and not unfairly discriminatory to add the language proposed in Options 7, Section 6.E as it will make clear that no marketing fees will be charged for Select and Non-Select Symbols with the proposed changes, and that if the Exchange determines to charge a marketing fee in the future, it will do so pursuant to a rule filing.

Non-Select Regular Order Pricing

The Exchange believes that the proposed change to adopt the maker/taker pricing model for regular Non-Select Symbol orders as described above is reasonable as it is designed to increase its liquidity and opportunities for all members to trade on the

[34] As discussed above, the Non-Select Symbol fee for Market Makers will increase from $0.25 to $0.70 per contract (maker fee) and to $0.72 per contract (taker fee).

Exchange. Generally, the proposed changes will replace the existing fees with a new maker/taker fee structure where market participants other than Priority Customers are charged a fee based on whether the market participant adds or removes liquidity. Priority Customer orders, meanwhile, will be eligible for highly competitive maker rebates or assessed no taker fees.[35] With these changes, all market participants will also be charged a higher taker fee for trades executed against Priority Customers. For the reasons discussed in the following paragraphs, the Exchange believes that the proposed fee structure will be beneficial to market participants and will encourage an active and liquid market in Non-Select Symbols on ISE.

Under the proposed pricing structure, all non-Priority Customer orders will be charged a uniform base execution fee for adding liquidity (i.e., maker fee of $0.70 per contract) and for removing liquidity (i.e., taker fee of $0.72 per contract). The Exchange believes that the proposed pricing is set at levels that will encourage market participants to increase their Non-Select Symbol activity, especially activity that adds liquidity, on the Exchange. While Market Makers, including Market Maker orders sent by EAMs, will be charged higher fees than the fees currently assessed, the Exchange believes that the increased fees are appropriate to offset the proposed significant Priority Customer maker incentives (as described below).[36] Furthermore, the Exchange believes that all market

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35 Furthermore, as discussed below for Market Maker Plus, Market Makers will be eligible to qualify for substantially lower fees or receive a rebate based on their contribution to the market.

36 See supra note 35. Non-Select Symbol fees are currently $0.25 per contract for Market Makers, and $0.20 per contract for Market Maker orders sent by EAMs.

participants will benefit from additional liquidity created by the Priority Customer rebates.

In addition, Priority Customer orders will be eligible for free executions for removing liquidity and paid a rebate of $0.86 per contract for adding liquidity. Members will also have the opportunity to receive an additional $0.14 rebate if they execute more than 0.06% of Regular Order Non-Select Symbol Priority Customer Volume (excluding Crossing Orders and Responses to Crossing Orders) calculated as a percentage of Customer Total Consolidated Volume per day in a given month, for a total rebate of up to $1.00 per contract.[37] Crossing Orders and Responses to Crossing Orders will be excluded from the proposed volume calculation as this type of order flow is subject to separate pricing, with various incentives currently provided to Members that trade in the Exchange's crossing mechanisms.

The Exchange is proposing to base the additional Priority Customer maker incentive on a percentage of industry volume in recognition of the fact that the volume executed by a Member may rise or fall with industry volume. This would allow the volume calculation to be calibrated to current market volumes rather than requiring the same amount of volume regardless of market conditions. In addition, by basing the proposed volume calculation on Priority Customer regular order volume that adds or removes liquidity in Non-Select Symbols on the Exchange, the Exchange is seeking to incentivize Members to increase market participation in Non-Select Symbols to qualify

[37] As discussed above, all regular Priority Customer order volume that adds or removes liquidity in Non-Select Symbols on the Exchange is included in the proposed volume calculation, except for volume executed as Crossing Orders and Responses to Crossing Orders.

for the additional rebate. The Exchange believes that the significant rebate incentives it is proposing to provide for Priority Customer orders, taken together with the $0.00 per contract taker fee, will incentivize Members to bring Priority Customer order flow in Non-Select Symbols, thereby creating additional liquidity to the benefit of all market participants and investors that trade on the Exchange.

With respect to the increased taker fees for trades executed against a Priority Customer, the Exchange believes that the proposed fees are appropriate as they are designed to offset the proposed maker rebate.[38] As described above, Priority Customers will be offered significant maker incentives. The Exchange believes that Members will benefit from the additional liquidity created by the Priority Customer rebates, and it is therefore appropriate to charge an increased taker fee for trades executed against a Priority Customer. The Exchange notes that other options exchanges, including for example its affiliate Nasdaq GEMX, charge higher taker fees when the counterparty is a Priority Customer.[39]

The Exchange also believes that it is reasonable to stipulate that for Priority Customer orders adding liquidity in Non-Select Symbols, there will be no fee charged or rebate provided when trading against Priority Customer complex orders that leg into the regular order book. As discussed above, the Exchange currently does not charge any fee to Priority Customer complex orders in Non-Select Symbols that leg into the regular

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38 As discussed above, non-Priority Customers will be charged a taker fee of $1.10 per contract when trading against Priority Customers instead of the $0.72 taker fee. Priority Customers will be charged a taker fee of $0.86 per contract when trading against Priority Customers instead of receiving free executions.

39 See Nasdaq GEMX Pricing Schedule at Options 7, Section 3, note 16.

market and trade with resting interest on the order book, which may include resting Priority Customer orders. As such, the Exchange believes it is reasonable to not charge a fee or provide a rebate to a Non-Select Symbol Priority Customer order resting on the regular order book when the Non-Select Symbol Priority Customer order legs out of the complex order book and interacts with such interest.

The Exchange believes that the proposed maker/taker pricing model in Non-Select Symbols is equitable and not unfairly discriminatory as all non-Priority Customer orders will be assessed consistent maker/taker fees under the Exchange's proposal, regardless of market participant category. The Exchange believes it is equitable and not unfairly discriminatory to charge a lower fee (or no fee), or to offer a rebate, for Priority Customer orders as the Exchange has historically offered lower execution fees or rebates to those market participants. Furthermore, Priority Customer order flow enhances liquidity on the Exchange for the benefit of all market participants by providing more trading opportunities, which in turn attracts Market Makers and other market participants that may trade with this order flow.

Lastly, the Exchange believes it is reasonable to no longer differentiate the pricing between Market Makers and Market Maker orders sent by EAMs in light of the foregoing changes to adopt a more standardized maker/taker pricing model across all non-Priority Customers. With this change, both market participant categories will be charged the same fees across all Non-Select Symbol orders, including Crossing Orders and Responses to Crossing Orders. As discussed above, the current fees for PIM Orders and Responses to Crossing Orders are already consistent across both market participant categories, except the fee for all other Crossing Orders. The Exchange therefore believes it is reasonable to decrease this fee for Market Makers as with this change Market Makers will be charged the same fee as Market Maker orders sent by EAMs as well as all other non-Priority Customer orders. The Exchange further believes that the proposed changes to remove the separate pricing for Market Maker orders sent by EAMs are equitable and not unfairly discriminatory as the proposed fees for this category will now be consistent with other non-Priority Customer fees.

Market Maker Plus in Non-Select Symbols

The Exchange believes that it is reasonable to adopt the Market Maker Plus program for Non-Select Symbols in the manner discussed above as this program is designed to encourage better market quality and make ISE a more attractive market for Non-Select Symbols, similar to the existing Market Maker Plus program for Select Symbols. Under the proposed program, Market Makers would be rewarded for providing liquidity in Non-Select Symbols with discounted fees or a rebate if the Market Maker achieves a higher Market Maker Plus tier based on time spent quoting at the NBBO.[40] The Exchange believes that it is reasonable to offer these fee incentives to Market Makers that add liquidity because Market Makers provide an important function to the market when they provide liquidity to other market participants through their displayed quotes. The Exchange believes that incentivizing Market Makers to provide liquidity through the proposed Market Maker Plus program will create additional displayed liquidity in Non-Select Symbols, and increase opportunities for market participants to trade, which benefits all market participants in the quality of order interaction.

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40 As discussed above, this discounted fee or rebate will be provided in lieu of the base maker fee of $0.70 per contract.

The Exchange believes that the proposed program is reasonable because it is structured similarly to the existing program for Select Symbols. As proposed, the Market Maker Plus Tier qualifications for Non-Select Symbols, especially proposed Tier 2 and Tier 3, will be slightly more stringent than the existing tiers for Select Symbols.[41] Because Non-Select Symbols generally tend to trade less frequently and may have wider NBBOs than Select Symbols, the Exchange believes the proposed tier qualifications are set at appropriate levels that Market Makers could potentially achieve if they choose to engage in the program.

The Exchange believes that it is reasonable to reduce the incentives for Market Makers that qualify for Tier 3 under the proposed Market Maker Plus program if they trade against Priority Customer orders to help offset the significantly competitive maker/taker pricing proposed above for Priority Customers.[42] Nonetheless, the proposed Tier 3 incentives will still be higher than the proposed incentives in Tier 1 and Tier 2, even if the qualifying Market Maker trades against a Priority Customer, thereby ensuring that the proposed program will be attractive to participating Market Makers.

The Exchange believes that it is reasonable to provide a reduced incentive in Non-Select Symbols to Market Makers who do not qualify for any Market Maker Plus tiers in a given month, but qualified for Market Maker Plus Tier 2 or higher in at least four of the

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41 For instance, the qualifications for the Market Maker Plus Tiers in Select Symbols (other than SPY, QQQ, IWM, AMZN, FB, and NVDA) are 85% to less than 95% for Tier 2, and 95% or greater for Tier 3. In Non-Select Symbols, Tier 2 will be 90% to 98%, and Tier 3 will be 98% or greater.

42 As proposed, qualifying Market Makers that trade against Priority Customers will be assessed a fee of $0.10 per contract in Tier 3 instead of receiving the $0.40 rebate that would be provided to qualifying Market Makers that trade against non-Priority Customers.

previous six months. The Exchange provides a similar reduced rebate today for Select Symbols that is the applicable Tier 2 rebate reduced by $0.08 per contract. Because the proposed Tier 2 incentive for Non-Select Symbols will be a fee instead of a rebate, the Exchange believes it is appropriate to offer a reduced incentive that is the Tier 2 fee increased by $0.08 per contract. Similar to the existing reduced rebate for Select Symbols, the Exchange believes that this change will preserve the intent of the Market Maker Plus program to reward strong liquidity providers, and avoids penalizing participants while continuing to require Market Makers to quote significantly at the NBBO.

The Exchange believes that the proposed Market Maker Plus program is equitable and not unfairly discriminatory as all Market Makers can qualify for the same incentives under the proposed program. Furthermore, the Exchange believes it is equitable and not unfairly discriminatory to offer these rebates to only Market Makers because Market Makers, and in particular Market Makers that achieve Market Maker Plus status as proposed, are subject to additional requirements and obligations (such as quoting obligations) that other market participants are not.

<u>Market Maker Discount Tiers in Non-Select Symbols</u>

The Exchange believes that it is reasonable to eliminate the Market Maker discount tiers set forth in Options 7, Section 6.D. Because the objective of the new Market Maker Plus program for Non-Select Symbols, as discussed above, is to incentivize higher Market Maker activity in Non-Select Symbols, similar to the discounted fee today, the Exchange believes it is no longer necessary to offer the current incentive alongside the new Market Maker Plus program. The Exchange believes that eliminating the Market Maker discount tiers is equitable and not unfairly discriminatory as it will apply uniformly to all similarly situated market participants.

Flash Orders

The Exchange believes that the proposed Flash Orders changes are reasonable as they specify how the Exchange will charge Members for Flash Orders with the introduction of maker/taker pricing in Non-Select Symbols. Under the Exchange's proposal, all non-Priority Customers will be charged a uniform taker fee of $0.72 per contract for initiating Flash Orders in Non-Select Symbols, and a flat fee of $0.25 per contract for responses to Flash Orders in Non-Select Symbols. Priority Customers will continue to receive free executions in Non-Select Symbols, regardless of initiating or responding to a Flash Order. As discussed above, the pricing for the initiation and response to Flash Orders in Select Symbols will remain unchanged for all market participant types under this proposal.

The Exchange believes that the proposed pricing for initiating and responding to Flash Orders in Non-Select Symbols is equitable and not unfairly discriminatory as the proposed fees would be more standardized across non-Priority Customer market participant types. Furthermore, the Exchange believes that it is equitable and not unfairly discriminatory to continue charging no fees to Priority Customers for the initiation and response to Flash Orders in Non-Select Symbols for the same reasons discussed above for the proposed Priority Customer maker/taker pricing – i.e., because Priority Customer order flow enhances liquidity on the Exchange to the benefit of all market participants by providing more trading opportunities.

The Exchange believes it is reasonable to eliminate the $0.05 per contract flash credit. The Exchange previously adopted this credit to encourage Members to participate in the flash auction by responding to a Priority Customer Flash Order. The Exchange no longer believes that this incentive is necessary with the proposed changes to charge non-Priority Customers a lower response fee of $0.25 per contract, and is therefore removing it. The Exchange also believes that the proposed removal of this credit is equitable and not unfairly discriminatory as it will apply uniformly to all market participants. As proposed, no market participant will be eligible for a flash credit.

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 intra-market competition, the Exchange does not believe that its proposal will place any category of market participant at a competitive disadvantage. The Exchange believes that all of the changes proposed above will incentivize market participants to direct liquidity in Non-Select Symbols to the Exchange. While some aspects of the proposal apply directly to Market Makers (through the new Market Maker Plus program) and Priority Customers (through rebates or free executions under the proposed maker/taker pricing model), the Exchange believes that the proposed changes taken together will fortify and encourage activity, especially liquidity adding activity, in Non-Select Symbols. As noted above, all market participants will benefit from any increase in market activity that the proposal effectuates.

In terms of inter-market competition, the Exchange 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. 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.

Moreover, as noted above, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and rebate changes. 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.

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,[43] the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-

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43 15 U.S.C. 78s(b)(3)(A)(ii).

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.

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

Not applicable.

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-2020-06)

February__, 2020

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Exchange's Pricing Schedule at Options 7

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 February 12, 2020, Nasdaq ISE, 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 Exchange's Pricing Schedule at Options 7, as described further below.

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

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

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

2 17 CFR 240.19b-4.

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 amend the Exchange's Pricing Schedule at Options 7 with the objective of attracting additional volume to the Exchange in Non-Select Symbols,[3] where the Exchange has seen less activity than it has in Select Symbols.[4] Each change is described in detail below.

The Exchange initially filed the proposed rule change on February 3, 2020 (SR-ISE-2020-03). On February 12, 2020, the Exchange withdrew that filing and submitted this filing.

Marketing Fee

By way of background, the Exchange administers a marketing fee program that helps Market Makers[5] 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.[6] This program is funded through a fee of $0.70 per contract, which

3 "Non-Select Symbols" are options overlying all symbols excluding Select Symbols.

4 "Select Symbols" are options overlying all symbols listed on the Exchange that are in the Penny Pilot Program.

5 The term "Market Makers" refers to "Competitive Market Makers" and "Primary Market Makers" collectively. See Options 1, Section 1(a)(21).

6 The marketing fee is rebated proportionally to the Members that paid the fee such that on a monthly basis the market fee fund balance administered by the Primary

is paid by the Market Maker for each regular Priority Customer[7] contract executed in Non-Select Symbols.[8]

In connection with the proposed fee changes to the regular Non-Select Symbol pricing schedule described below, the Exchange proposes to set this marketing fee to $0.00 per contract. The Exchange believes that the proposed fee change will ensure that the total fees paid by Market Makers for regular executions in Non-Select Symbols will remain at a level the Exchange believes is appropriate. The Exchange also proposes in Options 7, Section 6.E to add language that makes clear no marketing fees will be charged with the proposed changes. In particular, the Exchange will add that no marketing fees are charged for Select and Non-Select Symbols. If the Exchange determines to charge a marketing fee in the future, it will do so pursuant to a rule filing.

Non-Select Regular Order Pricing

As set forth in Options 7, Section 3, the Exchange currently charges the following transaction fees for regular orders in Non-Select Symbols (excluding index options):[9]

Market Maker for a Group of options established under Options 2, Section 3(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. See Options 7, Section 6.E.

7 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 Nasdaq ISE Options 1, Section 1(a)(37).

8 The Exchange does not charge Market Makers a marketing fee for regular Priority Customer contracts in Select Symbols. Furthermore, the marketing fee is currently waived for NDX, NQX, MNX, Flash Orders and for Complex Orders in all symbols.

$0.25 per contract for Market Maker orders, $0.20 per contract for Market Maker orders sent by EAMs, and $0.72 per contract for Non-Nasdaq ISE Market Maker,[10] Firm Proprietary[11] / Broker-Dealer,[12] and Professional Customer[13] orders. The Exchange applies the foregoing fees to regular transactions regardless of whether the order adds or removes liquidity on ISE. The Exchange currently does not charge a fee for regular Priority Customer orders in Non-Select Symbols.

The Exchange now proposes to replace the existing fee structure with a maker/taker pricing model where all market participants (except Priority Customers) will be assessed a uniform per contract "maker" fee for Non-Select Symbol executions that add liquidity on the Exchange, and a separate per contract "taker" fee for Non-Select Symbol executions that remove liquidity.[14] Generally speaking, the proposed maker fees will be slightly lower than the proposed taker fees in order to incentivize Members to increase their liquidity adding activity in Non-Select Symbols. The Exchange also

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9 Specifically, for all executions in regular NDX and NQX orders, the Exchange charges the applicable index options fees in Options 7, Section 5 instead.

10 A "Non-Nasdaq ISE Market Maker" is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934, as amended, registered in the same options class on another options exchange.

11 A "Firm Proprietary" order is an order submitted by a member for its own proprietary account.

12 A "Broker-Dealer" order is an order submitted by a member for a broker-dealer account that is not its own proprietary account.

13 A "Professional Customer" is a person or entity that is not a broker/dealer and is not a Priority Customer.

14 As discussed later in this filing, the Exchange will also introduce a Market Maker Plus program for Non-Select Symbols whereby qualifying Market Makers would receive a discounted fee or rebate in lieu of paying the proposed maker fee if they meet the proposed tier threshold requirements.

proposes to charge all market participants higher taker fees for trades executed against Priority Customer Orders. The Exchange further proposes to provide a significant maker rebate for Priority Customer orders in Non-Select Symbols, and to continue assessing no taker fees for such orders.

In light of the proposed changes to charge consistent maker/taker fees across all non-Priority Customer orders, the Exchange proposes to remove the separate pricing for Market Maker orders sent by EAMs from the Non-Select Symbol pricing schedule in Options 7, Section 3, and instead specify that the Market Maker fees in Non-Select Symbols will also apply to the Market Maker orders sent by EAMs.[15] With this change, the Exchange also proposes to reduce the current fee assessed to Market Makers for Crossing Orders[16] (except PIM orders) from $0.25 to $0.20 per contract, which would align this fee with the fee currently charged to Market Maker orders sent by EAMs, and to all other non-Priority Customer orders. The Exchange currently charges Market Makers (including Market Maker orders sent by EAMs) the same fee for PIM orders and for Responses to Crossing Orders,[17] and those fees will remain unchanged with this proposal.

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15 This is similar to the approach for Select Symbols today. See Options 7, Section 3, note 8.

16 A "Crossing Order" is an order executed in the Exchange's Facilitation Mechanism, Solicited Order Mechanism, Price Improvement Mechanism (PIM) or submitted as a Qualified Contingent Cross order. For purposes of the Pricing Schedule, orders executed in the Block Order Mechanism are also considered Crossing Orders.

17 "Responses to Crossing Order" is any contra-side interest submitted after the commencement of an auction in the Exchange's Facilitation Mechanism, Solicited Order Mechanism, Block Order Mechanism or PIM.

Accordingly, the new Non-Select Symbol pricing in Options 7, Section 3 will be as follows:

Market Participant	Maker Rebate / Fee	Taker Fee	Fee for Crossing Orders Except PIM Orders	Fee for PIM Orders	Fee for Responses to Crossing Orders Except PIM Orders	Fee for Responses to PIM Orders
Market Maker	$0.70	$0.72	$0.20	$0.10	$0.50	$0.35
Non-Nasdaq ISE Market Maker (FarMM)	$0.70	$0.72	$0.20	$0.10	$0.50	$0.35
Firm Proprietary / Broker-Dealer	$0.70	$0.72	$0.20	$0.10	$0.50	$0.35
Professional Customer	$0.70	$0.72	$0.20	$0.10	$0.50	$0.35
Priority Customer	($0.86)	$0.00	$0.00	$0.00	$0.50	$0.35

As noted above, the proposed taker fees set forth in the table will apply to orders that trade against non-Priority Customer orders. When trading against Priority Customer orders, the Exchange proposes to charge a higher taker fee. Specifically, non-Priority Customer orders will be charged a taker fee of $1.10 per contract for trades executed against a Priority Customer. Priority Customer orders will be charged a taker fee of $0.86 per contract for trades executed against a Priority Customer.[18]

As it relates to the new Priority Customer maker rebate, the Exchange also proposes to offer Members an additional rebate of $0.14 per contract if they execute more than 0.06% of Regular Order Non-Select Symbol Priority Customer Volume (excluding Crossing Orders and Responses to Crossing Orders) calculated as a percentage of Customer Total Consolidated Volume[19] per day in a given month.[20] The Exchange notes that the proposed volume calculation includes all regular order Priority Customer volume that adds or removes liquidity in Non-Select Symbols on the Exchange, except for volume executed as Crossing Orders and Responses to Crossing Orders. Thus, Members that transact in greater Non-Select Symbol Priority Customer volume on the Exchange (whether by adding or removing liquidity) may be eligible to receive rebates up to $1.00 per contract on their Priority Customers regular orders in Non-Select Symbols that add liquidity to ISE.

Lastly, the Exchange proposes to stipulate that for Priority Customer orders adding liquidity in Non-Select Symbols, there will be no fee charged or rebate provided when trading against Priority Customer complex orders that leg into the regular order book.[21] Today, the Exchange does not charge any fee to Priority Customer complex

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[18] See proposed Options 7, Section 3, note 3.

[19] "Customer Total Consolidated Volume" means the total national volume cleared at The Options Clearing Corporation in the Customer range in equity and ETF options in that month.

[20] See proposed Options 7, Section 3, note 15.

[21] See proposed Options 7, Section 3, note 18.

orders in Non-Select Symbols that leg into the regular market and trade with resting interest on the regular order book, which may include resting Priority Customer orders. As such, the Exchange believes it is appropriate to not charge a fee or provide a rebate to a Non-Select Symbol Priority Customer order resting on the regular order book when the Non-Select Symbol Priority Customer order legs out of the complex order book and interacts with such interest.

Market Maker Plus in Non-Select Symbols

The Exchange currently operates a Market Maker Plus program for regular orders in Select Symbols that provides tiered rebates to Market Makers based on time spent quoting at the national best bid or offer ("NBBO").[22] This program is designed to reward Market Makers that contribute to market quality by maintaining tight markets in Select Symbols. Market Makers are evaluated each trading day for the percentage of time spent on the NBBO for qualifying series that expire in two successive thirty calendar day periods beginning on that trading day. A Market Maker Plus is a Market Maker who is on the NBBO a specified percentage of the time on average for the month based on daily performance in the qualifying series for each of the two successive periods described above.[23] If a Market Maker would qualify for a different Market Maker Plus tier in each of the two successive periods described above, then the lower of the two Market Maker

22 See Options 7, Section 3, note 5.

23 Qualifying series are series trading between $0.03 and $3.00 (for options whose underlying stock's previous trading day's last sale price was less than or equal to $100) and between $0.10 and $3.00 (for options whose underlying stock's previous trading day's last sale price was greater than $100) in premium.

Plus tier rebates shall apply to all contracts.[24] A Market Maker's worst quoting day each month for each of the two successive periods described above, on a per symbol basis, will be excluded in calculating whether a Market Maker qualifies for this rebate. A Market Maker who qualifies for Market Maker Plus Tiers 2 or higher in at least four of the previous six months will be eligible to receive a reduced Tier 2 rebate in a given month where the Market Maker does not qualify for any Market Maker Plus tiers. This rebate will be the applicable Tier 2 rebate reduced by $0.08 per contract.

The Exchange believes that the Market Maker Plus program has been successful overall in encouraging better market quality and making the Exchange a more attractive market for Select Symbols. Accordingly, the Exchange proposes to replicate this success for Non-Select Symbols by introducing a Market Maker Plus program with substantially similar qualifications in order to promote and encourage liquidity in those particular symbols. Specifically, Market Makers that achieve Market Maker Plus Tiers 1-3 as proposed below for executions in Non-Select Symbols (excluding index options) will be assessed the following maker fee or rebate instead of paying the $0.70 per contract maker fee as proposed above:[25]

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24 Market Makers may enter quotes in a symbol using one or more unique, exchange assigned identifiers - i.e., badge/suffix combinations. Market Maker Plus status is calculated independently based on quotes entered in a symbol for each of the Market Maker's badge/suffix combinations, and the highest tier achieved for any badge/suffix combination quoting that symbol applies to executions across all badge/suffix combinations that the member uses to trade in that symbol. Only badge/suffix combinations quoting a minimum of ten trading days within the month will be used to determine whether the Market Maker Plus status has been met and the specific tier to be applied to the Market Maker's performance for that month.

25 As with all Non-Select Symbol pricing in Options 7, Section 3, the proposed Market Maker Plus program will not apply to NDX and NQX options, and the

Market Maker Plus Tier (Specified Percentage)	Maker Fee / Rebate
Tier 1 (80% to less than 90%)	$0.50
Tier 2 (90% to less than 98%)	$0.30
Tier 3 (98% or greater)	($0.40)

The Market Maker Plus Tier 3 rebate will be provided if the qualifying Market Maker trades against non-Priority Customer orders. Qualifying Market Makers that trade against Priority Customer orders will be charged a Market Maker Plus Tier 3 fee of $0.10 per contract instead of receiving the Tier 3 rebate.[26]

The Exchange also proposes to amend the existing Market Maker Plus provisions throughout to provide that Market Makers that meet these qualifications will be assessed the applicable fee or rebate. Lastly, the Exchange proposes to amend the language around the reduced Tier 2 incentive currently provided to qualifying Market Makers in Select Symbols, and expand these provisions to cover the proposed fees in the Non-Select Market Maker Plus program. The Exchange proposes to specify that for Select Symbols, this rebate will continue to be the applicable Tier 2 rebate reduced by $0.08 per contract. For Non-Select Symbols, this fee will be the Tier 2 fee increased by $0.08 per contract.

Market Maker Discount Tiers in Non-Select Symbols

Today, as set forth in Options 7, Section 6.D, Market Makers that execute a monthly volume of 250,000 contracts or more in regular Non-Select Symbol orders are entitled to a discounted rate of $0.20 per contract instead of paying the regular $0.25 per

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Exchange will charge the applicable index options fees in Options 7, Section 5 instead.

26 See proposed Options 7, Section 3, note 6.

contract fee. The Market Maker discount tiers were originally adopted to incentivize greater Market Maker activity in Non-Select Symbols. With the introduction of the new Market Maker Plus program for Non-Select Symbols as described above, the Exchange now proposes to eliminate the Market Maker discount tiers.

Flash Orders

With the introduction of the maker/taker fee structure proposed above for Non-Select Symbols, the Exchange proposes to amend how Flash Orders will be charged under this proposal. By way of background, a "Flash Order" is an order that is exposed at the NBBO by the Exchange to all Members for execution, as provided under Supplementary Material .02 to Options 5, Section 2. Today, Flash Orders are assessed the applicable taker fee for the initiation of a Flash Order and the applicable maker rebate (only for Market Makers that qualify for Market Maker Plus) or maker fee for responses to the Flash Order. Thus, for the initiation of a Flash Order in Select Symbols, the Exchange currently assesses a taker fee of $0.45 per contract for Market Maker orders (including Market Maker orders sent by an EAM), $0.46 per contract for all other non-Priority Customer orders, and $0.41 per contract for Priority Customer orders. For responses to a Flash Order in Select Symbols, the Exchange currently assesses a maker fee of $0.11 per contract for all non-Priority Customer orders and no fee for Priority Customer orders.[27] As it relates to Flash Orders in Non-Select Symbols, because the

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[27] In addition, the maker fee is currently $0.11 for Market Makers, except that (i) Market Makers that qualify for Market Maker Plus would not pay this fee if they meet the applicable tier thresholds set forth in note 5 of Options 7, Section 3, and would instead receive a rebate based on the Market Maker Plus tier for which they qualify; (ii) no fee will be charged or rebate provided when trading against non-Priority Customer complex orders that leg into the regular order book; and (iii) a $0.15 per contract would apply instead of the $0.11 per contract maker fee or

Exchange does not currently differentiate between maker and taker fees for Non-Select Symbol executions, Members today are charged the same fee for initiating and responding to a Flash Order. Specifically, the fee is $0.25 per contract for Market Maker orders, $0.20 per contract for Market Maker orders sent by EAMs, $0.72 per contract for all other non-Priority Customer orders, and $0.00 per contract for Priority Customer orders. In addition to the aforementioned fees and rebates, the Exchange also pays a credit of $0.05 per contract to a market participant that responds to a Flash Order in Select or Non-Select Symbols which executes against a Priority Customer.

With the introduction of the maker/taker fee structure proposed above for Non-Select Symbols, the Exchange now proposes to charge the applicable taker fee for initiating Flash Orders in Non-Select Symbols. The fee for initiating Flash Orders will therefore increase from $0.25 to $0.72 per contract for Market Makers and from $0.20 to $0.72 for Market Maker orders sent by EAMs.[28] The initiating fee, as proposed, will remain the same for all other market participants, ($0.72 per contract for all other non-Priority Customer orders, and $0.00 per contract for Priority Customer orders).

In addition, the Exchange proposes to charge all non-Priority Customer responses to Flash Orders in Non-Select Symbols a flat fee of $0.25 per contract, and not charge a fee for Priority Customer responses. The flash response fee will therefore remain the same for Market Maker orders, except Market Maker orders sent by EAMs will see an increase from $0.20 to $0.25 per contract. For all other non-Priority Customers, the flash

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applicable Market Maker Plus rebate when trading against Priority Customer complex orders that leg into the regular order book.

28 As discussed earlier in this filing, the Exchange is proposing to remove the distinction between Non-Select Symbol pricing for Market Makers and for Market Maker orders sent by EAMs.

response fee in Non-Select Symbols will decrease from $0.72 per contract to $0.25 per contract. Lastly, for Priority Customers, the flash response fee will remain the same at $0.00 per contract.

The Exchange will continue to charge the applicable Select Symbol taker fee for initiating Flash Orders in those symbols, which taker fees are not changing under this proposal. Similarly, the Exchange will continue to charge the applicable Select Symbol maker rebate or fee for responses to Flash Orders in those symbols, which maker pricing will remain the same under this proposal. Accordingly, the Exchange proposes to amend the existing Flash Order provisions to differentiate pricing for Select Symbols and Non-Select Symbols where applicable.[29] Lastly, the Exchange proposes to remove the $0.05 credit discussed above for both Select and Non-Select Symbols.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[30] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[31] 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.

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29 See proposed Options 7, Section 3, note 17. The Exchange will also make technical changes to replace the "Section I" references therein and to the definition of Flash Order in Options 7, Section 1 to "Section 3." The Exchange will also amend the first two sentences of note 17 to correct a typo and for better readability.

30 15 U.S.C. 78f(b).

31 15 U.S.C. 78f(b)(4) and (5).

The Exchange's proposed changes to its Pricing Schedule are consistent with the Act in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In NetCoalition v. Securities and Exchange Commission, the D.C. Circuit stated as follows: "[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'…."[32]

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."[33]

Numerous indicia demonstrate the competitive nature of this market. For

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32 NetCoalition v. SEC, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

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

example, clear substitutes to the Exchange exist in the market for equity security transaction services. The Exchange is only one of sixteen options exchanges to which market participants may direct their order flow. Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. Within the foregoing context, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

Marketing Fee

The Exchange believes that it is reasonable to set the marketing fee to $0.00 per contract because the Exchange has proposed changes to its Non-Select Symbol pricing that will result in Market Makers paying higher maker/taker fees than today.[34] Eliminating the marketing fee will keep total execution costs down when Market Makers trade against regular Priority Customer orders in Non-Select Symbols. The Exchange also believes that the proposed fee change is equitable and not unfairly discriminatory as no Market Makers would be charged a marketing fee under this proposal. The Exchange also believes that it is reasonable, equitable and not unfairly discriminatory to add the language proposed in Options 7, Section 6.E as it will make clear that no marketing fees will be charged for Select and Non-Select Symbols with the proposed changes, and that if the Exchange determines to charge a marketing fee in the future, it will do so pursuant to a rule filing.

Non-Select Regular Order Pricing

[34] As discussed above, the Non-Select Symbol fee for Market Makers will increase from $0.25 to $0.70 per contract (maker fee) and to $0.72 per contract (taker fee).

The Exchange believes that the proposed change to adopt the maker/taker pricing model for regular Non-Select Symbol orders as described above is reasonable as it is designed to increase its liquidity and opportunities for all members to trade on the Exchange. Generally, the proposed changes will replace the existing fees with a new maker/taker fee structure where market participants other than Priority Customers are charged a fee based on whether the market participant adds or removes liquidity. Priority Customer orders, meanwhile, will be eligible for highly competitive maker rebates or assessed no taker fees.[35] With these changes, all market participants will also be charged a higher taker fee for trades executed against Priority Customers. For the reasons discussed in the following paragraphs, the Exchange believes that the proposed fee structure will be beneficial to market participants and will encourage an active and liquid market in Non-Select Symbols on ISE.

Under the proposed pricing structure, all non-Priority Customer orders will be charged a uniform base execution fee for adding liquidity (i.e., maker fee of $0.70 per contract) and for removing liquidity (i.e., taker fee of $0.72 per contract). The Exchange believes that the proposed pricing is set at levels that will encourage market participants to increase their Non-Select Symbol activity, especially activity that adds liquidity, on the Exchange. While Market Makers, including Market Maker orders sent by EAMs, will be charged higher fees than the fees currently assessed, the Exchange believes that the increased fees are appropriate to offset the proposed significant Priority Customer maker

[35] Furthermore, as discussed below for Market Maker Plus, Market Makers will be eligible to qualify for substantially lower fees or receive a rebate based on their contribution to the market.

incentives (as described below).[36] Furthermore, the Exchange believes that all market participants will benefit from additional liquidity created by the Priority Customer rebates.

In addition, Priority Customer orders will be eligible for free executions for removing liquidity and paid a rebate of $0.86 per contract for adding liquidity. Members will also have the opportunity to receive an additional $0.14 rebate if they execute more than 0.06% of Regular Order Non-Select Symbol Priority Customer Volume (excluding Crossing Orders and Responses to Crossing Orders) calculated as a percentage of Customer Total Consolidated Volume per day in a given month, for a total rebate of up to $1.00 per contract.[37] Crossing Orders and Responses to Crossing Orders will be excluded from the proposed volume calculation as this type of order flow is subject to separate pricing, with various incentives currently provided to Members that trade in the Exchange's crossing mechanisms.

The Exchange is proposing to base the additional Priority Customer maker incentive on a percentage of industry volume in recognition of the fact that the volume executed by a Member may rise or fall with industry volume. This would allow the volume calculation to be calibrated to current market volumes rather than requiring the same amount of volume regardless of market conditions. In addition, by basing the proposed volume calculation on Priority Customer regular order volume that adds or

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[36] See supra note 35. Non-Select Symbol fees are currently $0.25 per contract for Market Makers, and $0.20 per contract for Market Maker orders sent by EAMs.

[37] As discussed above, all regular Priority Customer order volume that adds or removes liquidity in Non-Select Symbols on the Exchange is included in the proposed volume calculation, except for volume executed as Crossing Orders and Responses to Crossing Orders.

removes liquidity in Non-Select Symbols on the Exchange, the Exchange is seeking to incentivize Members to increase market participation in Non-Select Symbols to qualify for the additional rebate. The Exchange believes that the significant rebate incentives it is proposing to provide for Priority Customer orders, taken together with the $0.00 per contract taker fee, will incentivize Members to bring Priority Customer order flow in Non-Select Symbols, thereby creating additional liquidity to the benefit of all market participants and investors that trade on the Exchange.

With respect to the increased taker fees for trades executed against a Priority Customer, the Exchange believes that the proposed fees are appropriate as they are designed to offset the proposed maker rebate.[38] As described above, Priority Customers will be offered significant maker incentives. The Exchange believes that Members will benefit from the additional liquidity created by the Priority Customer rebates, and it is therefore appropriate to charge an increased taker fee for trades executed against a Priority Customer. The Exchange notes that other options exchanges, including for example its affiliate Nasdaq GEMX, charge higher taker fees when the counterparty is a Priority Customer.[39]

The Exchange also believes that it is reasonable to stipulate that for Priority Customer orders adding liquidity in Non-Select Symbols, there will be no fee charged or rebate provided when trading against Priority Customer complex orders that leg into the regular order book. As discussed above, the Exchange currently does not charge any fee

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38 As discussed above, non-Priority Customers will be charged a taker fee of $1.10 per contract when trading against Priority Customers instead of the $0.72 taker fee. Priority Customers will be charged a taker fee of $0.86 per contract when trading against Priority Customers instead of receiving free executions.

39 See Nasdaq GEMX Pricing Schedule at Options 7, Section 3, note 16.

to Priority Customer complex orders in Non-Select Symbols that leg into the regular market and trade with resting interest on the order book, which may include resting Priority Customer orders. As such, the Exchange believes it is reasonable to not charge a fee or provide a rebate to a Non-Select Symbol Priority Customer order resting on the regular order book when the Non-Select Symbol Priority Customer order legs out of the complex order book and interacts with such interest.

The Exchange believes that the proposed maker/taker pricing model in Non-Select Symbols is equitable and not unfairly discriminatory as all non-Priority Customer orders will be assessed consistent maker/taker fees under the Exchange's proposal, regardless of market participant category. The Exchange believes it is equitable and not unfairly discriminatory to charge a lower fee (or no fee), or to offer a rebate, for Priority Customer orders as the Exchange has historically offered lower execution fees or rebates to those market participants. Furthermore, Priority Customer order flow enhances liquidity on the Exchange for the benefit of all market participants by providing more trading opportunities, which in turn attracts Market Makers and other market participants that may trade with this order flow.

Lastly, the Exchange believes it is reasonable to no longer differentiate the pricing between Market Makers and Market Maker orders sent by EAMs in light of the foregoing changes to adopt a more standardized maker/taker pricing model across all non-Priority Customers. With this change, both market participant categories will be charged the same fees across all Non-Select Symbol orders, including Crossing Orders and Responses to Crossing Orders. As discussed above, the current fees for PIM Orders and Responses to Crossing Orders are already consistent across both market participant categories, except the fee for all other Crossing Orders. The Exchange therefore believes it is reasonable to decrease this fee for Market Makers as with this change Market Makers will be charged the same fee as Market Maker orders sent by EAMs as well as all other non-Priority Customer orders. The Exchange further believes that the proposed changes to remove the separate pricing for Market Maker orders sent by EAMs are equitable and not unfairly discriminatory as the proposed fees for this category will now be consistent with other non-Priority Customer fees.

Market Maker Plus in Non-Select Symbols

The Exchange believes that it is reasonable to adopt the Market Maker Plus program for Non-Select Symbols in the manner discussed above as this program is designed to encourage better market quality and make ISE a more attractive market for Non-Select Symbols, similar to the existing Market Maker Plus program for Select Symbols. Under the proposed program, Market Makers would be rewarded for providing liquidity in Non-Select Symbols with discounted fees or a rebate if the Market Maker achieves a higher Market Maker Plus tier based on time spent quoting at the NBBO.[40] The Exchange believes that it is reasonable to offer these fee incentives to Market Makers that add liquidity because Market Makers provide an important function to the market when they provide liquidity to other market participants through their displayed quotes. The Exchange believes that incentivizing Market Makers to provide liquidity through the proposed Market Maker Plus program will create additional displayed liquidity in Non-Select Symbols, and increase opportunities for market participants to trade, which benefits all market participants in the quality of order interaction.

[40] As discussed above, this discounted fee or rebate will be provided in lieu of the base maker fee of $0.70 per contract.

The Exchange believes that the proposed program is reasonable because it is structured similarly to the existing program for Select Symbols. As proposed, the Market Maker Plus Tier qualifications for Non-Select Symbols, especially proposed Tier 2 and Tier 3, will be slightly more stringent than the existing tiers for Select Symbols.[41] Because Non-Select Symbols generally tend to trade less frequently and may have wider NBBOs than Select Symbols, the Exchange believes the proposed tier qualifications are set at appropriate levels that Market Makers could potentially achieve if they choose to engage in the program.

The Exchange believes that it is reasonable to reduce the incentives for Market Makers that qualify for Tier 3 under the proposed Market Maker Plus program if they trade against Priority Customer orders to help offset the significantly competitive maker/taker pricing proposed above for Priority Customers.[42] Nonetheless, the proposed Tier 3 incentives will still be higher than the proposed incentives in Tier 1 and Tier 2, even if the qualifying Market Maker trades against a Priority Customer, thereby ensuring that the proposed program will be attractive to participating Market Makers.

The Exchange believes that it is reasonable to provide a reduced incentive in Non-Select Symbols to Market Makers who do not qualify for any Market Maker Plus tiers in a given month, but qualified for Market Maker Plus Tier 2 or higher in at least four of the

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[41] For instance, the qualifications for the Market Maker Plus Tiers in Select Symbols (other than SPY, QQQ, IWM, AMZN, FB, and NVDA) are 85% to less than 95% for Tier 2, and 95% or greater for Tier 3. In Non-Select Symbols, Tier 2 will be 90% to 98%, and Tier 3 will be 98% or greater.

[42] As proposed, qualifying Market Makers that trade against Priority Customers will be assessed a fee of $0.10 per contract in Tier 3 instead of receiving the $0.40 rebate that would be provided to qualifying Market Makers that trade against non-Priority Customers.

previous six months. The Exchange provides a similar reduced rebate today for Select Symbols that is the applicable Tier 2 rebate reduced by $0.08 per contract. Because the proposed Tier 2 incentive for Non-Select Symbols will be a fee instead of a rebate, the Exchange believes it is appropriate to offer a reduced incentive that is the Tier 2 fee increased by $0.08 per contract. Similar to the existing reduced rebate for Select Symbols, the Exchange believes that this change will preserve the intent of the Market Maker Plus program to reward strong liquidity providers, and avoids penalizing participants while continuing to require Market Makers to quote significantly at the NBBO.

The Exchange believes that the proposed Market Maker Plus program is equitable and not unfairly discriminatory as all Market Makers can qualify for the same incentives under the proposed program. Furthermore, the Exchange believes it is equitable and not unfairly discriminatory to offer these rebates to only Market Makers because Market Makers, and in particular Market Makers that achieve Market Maker Plus status as proposed, are subject to additional requirements and obligations (such as quoting obligations) that other market participants are not.

Market Maker Discount Tiers in Non-Select Symbols

The Exchange believes that it is reasonable to eliminate the Market Maker discount tiers set forth in Options 7, Section 6.D. Because the objective of the new Market Maker Plus program for Non-Select Symbols, as discussed above, is to incentivize higher Market Maker activity in Non-Select Symbols, similar to the discounted fee today, the Exchange believes it is no longer necessary to offer the current incentive alongside the new Market Maker Plus program. The Exchange believes that eliminating the Market Maker discount tiers is equitable and not unfairly discriminatory as it will apply uniformly to all similarly situated market participants.

Flash Orders

The Exchange believes that the proposed Flash Orders changes are reasonable as they specify how the Exchange will charge Members for Flash Orders with the introduction of maker/taker pricing in Non-Select Symbols. Under the Exchange's proposal, all non-Priority Customers will be charged a uniform taker fee of $0.72 per contract for initiating Flash Orders in Non-Select Symbols, and a flat fee of $0.25 per contract for responses to Flash Orders in Non-Select Symbols. Priority Customers will continue to receive free executions in Non-Select Symbols, regardless of initiating or responding to a Flash Order. As discussed above, the pricing for the initiation and response to Flash Orders in Select Symbols will remain unchanged for all market participant types under this proposal.

The Exchange believes that the proposed pricing for initiating and responding to Flash Orders in Non-Select Symbols is equitable and not unfairly discriminatory as the proposed fees would be more standardized across non-Priority Customer market participant types. Furthermore, the Exchange believes that it is equitable and not unfairly discriminatory to continue charging no fees to Priority Customers for the initiation and response to Flash Orders in Non-Select Symbols for the same reasons discussed above for the proposed Priority Customer maker/taker pricing – i.e., because Priority Customer order flow enhances liquidity on the Exchange to the benefit of all market participants by providing more trading opportunities.

The Exchange believes it is reasonable to eliminate the $0.05 per contract flash credit. The Exchange previously adopted this credit to encourage Members to participate in the flash auction by responding to a Priority Customer Flash Order. The Exchange no longer believes that this incentive is necessary with the proposed changes to charge non-Priority Customers a lower response fee of $0.25 per contract, and is therefore removing it. The Exchange also believes that the proposed removal of this credit is equitable and not unfairly discriminatory as it will apply uniformly to all market participants. As proposed, no market participant will be eligible for a flash credit.

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 intra-market competition, the Exchange does not believe that its proposal will place any category of market participant at a competitive disadvantage. The Exchange believes that all of the changes proposed above will incentivize market participants to direct liquidity in Non-Select Symbols to the Exchange. While some aspects of the proposal apply directly to Market Makers (through the new Market Maker Plus program) and Priority Customers (through rebates or free executions under the proposed maker/taker pricing model), the Exchange believes that the proposed changes taken together will fortify and encourage activity, especially liquidity adding activity, in Non-Select Symbols. As noted above, all market participants will benefit from any increase in market activity that the proposal effectuates.

In terms of inter-market competition, the Exchange 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. 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.

Moreover, as noted above, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and rebate changes. 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.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[43] 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-2020-06 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-2020-06. This file number should be included on the subject line if e-mail is used. To help the Commission process

43 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-2020-06 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.[44]

J. Matthew DeLesDernier
Assistant Secretary

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[44] 17 CFR 200.30-3(a)(12).

EXHIBIT 5

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

Nasdaq ISE Rules

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Options 7 Pricing Schedule

Section 1. General Provisions

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A "**Flash Order**" is an order that is exposed at the National Best Bid or Offer by the Exchange to all members for execution, as provided under Supplementary Material .02 to Options 5, Section 2. Unless otherwise noted in Section [I]3 pricing, Flash Orders will be assessed the applicable "Taker" Fee for the initiation of a Flash Order and will be paid/assessed the applicable "Maker" Rebate/Fee for responses.

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Section 3. Regular Order Fees and Rebates

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Non-Select Symbols (Excluding Index Options) (7)

Market Participant	Maker Rebate / Fee (17)	Taker Fee(3) (17)	Fee for Crossing Orders Except PIM Orders(1) (2)	Fee for PIM Orders (1) (2) (13)	Fee for Responses to Crossing Orders Except PIM Orders	Fee for Responses to PIM Orders
Market Maker(8)	$0.70(5)	$0.[25(6)]72	$0.[25(6)]20	$0.10	$0.50	$0.35
[Market Maker (for orders sent by Electronic Access Members)]		[$0.20]	[$0.20]	[$0.10]	[$0.50]	[$0.35]
Non-Nasdaq ISE Market Maker (FarMM)	$0.70	$0.72	$0.20	$0.10	$0.50	$0.35
Firm Proprietary / Broker-Dealer	$0.70	$0.72	$0.20	$0.10	$0.50	$0.35
Professional	$0.70	$0.72	$0.20(16)	$0.10	$0.50	$0.35

Customer						
Priority Customer	($0.86)(15)(18)	$0.00	$0.00	$0.00	$0.50	$0.35

* * * * *

3. Non-Priority Customer orders will be charged a taker fee of $1.10 per contract for trades executed against a Priority Customer. Priority Customer orders will be charged a taker fee of $0.86 per contract for trades executed against a Priority Customer[Reserved].

* * * * *

5. Market Makers that qualify for Market Maker Plus will not pay this fee if they meet the applicable tier thresholds set forth in the table below, and will instead be assessed [receive] the below fees or rebates based on the applicable tier for which they qualify.

   Market Makers are evaluated each trading day for the percentage of time spent on the National Best Bid or National Best Offer ("NBBO") for qualifying series that expire in two successive thirty calendar day periods beginning on that trading day. A Market Maker Plus is a Market Maker who is on the NBBO a specified percentage of the time on average for the month based on daily performance in the qualifying series for each of the two successive periods described above. Qualifying series are series trading between $0.03 and $3.00 (for options whose underlying stock's previous trading day's last sale price was less than or equal to $100) and between $0.10 and $3.00 (for options whose underlying stock's previous trading day's last sale price was greater than $100) in premium. If a Market Maker would qualify for a different Market Maker Plus tier in each of the two successive periods described above, then the lower of the two Market Maker Plus tier fees or rebates shall apply to all contracts.

Market Makers may enter quotes in a symbol using one or more unique, exchange assigned identifiers - i.e., badge/suffix combinations. Market Maker Plus status is calculated independently based on quotes entered in a symbol for each of the Market Maker's badge/suffix combinations, and the highest tier achieved for any badge/suffix combination quoting that symbol applies to executions across all badge/suffix combinations that the member uses to trade in that symbol. Only badge/suffix combinations quoting a minimum of ten trading days within the month will be used to determine whether the Market Maker Plus status has been met and the specific tier to be applied to the Market Maker's performance for that month.

A Market Maker's worst quoting day each month for each of the two successive periods described above, on a per symbol basis, will be excluded in calculating whether a Market Maker qualifies for this fee or rebate. A Market Maker who qualifies for Market Maker Plus Tiers 2 or higher in at least four of the previous six months will be eligible to receive a reduced Tier 2 incentive[rebate] in a given month where the Market Maker does not qualify for any Market Maker Plus tiers. For Select Symbols, [T]this rebate will be the applicable Tier 2 rebate reduced by $0.08 per contract. For Non-Select Symbols, this fee will be the Tier 2 fee increased by $0.08 per contract.

The Exchange may exclude from any member's monthly Market Maker Plus tier calculation any Unanticipated Event; provided that the Exchange will only remove the day for members that would have a lower time at the NBBO for the specified series with the day included.

Select Symbols other than SPY, QQQ, IWM, AMZN, FB, and NVDA	
Market Maker Plus Tier (Specified Percentage)	**Maker Rebate**
Tier 1 (80% to less than 85%)	($0.15)
Tier 2 (85% to less than 95%)	($0.18)
Tier 3 (95% or greater)	($0.22)

SPY, QQQ, and IWM		
Market Maker Plus Tier (Specified Percentage)	**Regular Maker Rebate**	**Linked Maker Rebate** (9) (12)
Tier 1 (70% to less than 80%)	($0.00)	N/A
Tier 2 (80% to less than 85%)	($0.18)	($0.15)
Tier 3 (85% to less than 90%)	($0.22)	($0.19)
Tier 4 (90% or greater)	($0.26)	($0.23)

AMZN, FB, and NVDA	
Market Maker Plus Tier (Specified Percentage)	Maker Rebate (14)
Tier 1 (70% to less than 85%)	($0.15)
Tier 2 (85% to less than 95%)	($0.18)
Tier 3 (95% or greater)	($0.22)

Non-Select Symbols (excluding Index Options)(7)	
Market Maker Plus Tier (Specified Percentage)	**Maker Fee / Rebate**
Tier 1 (80% to less than 90%)	$0.50
Tier 2 (90% to less than 98%)	$0.30
Tier 3 (98% or greater)	($0.40)(6)

6. [Market Maker fees are subject to tier discounts, as provided in Section 6.D. The credits noted in note 17 will also apply.]This rebate will be provided if the qualifying Market Maker trades against non-Priority Customer orders. Qualifying Market Makers that trade against Priority Customer orders will be charged a Market Maker Plus Tier 3 fee of $0.10 per contract instead of receiving the Tier 3 rebate.

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15. [Reserved]Members that execute more than 0.06% of Regular Order Non-Select Symbol Priority Customer Volume (excluding Crossing Orders and Responses to Crossing Orders) calculated as a percentage of Customer Total Consolidated Volume per day in a given month will receive an additional rebate of $0.14 per contract.

* * * * *

17. A [M]market participant's order [which]that initiates a Flash Order will be assessed the appropriate Taker Fee in Section [I]3. [Market participants responding]All market participant responses to [a] Flash Orders in Select Symbols will be paid/assessed the appropriate Maker Rebate/Fee in Section [I]3. [In addition to aforementioned fees, a credit of $0.05 per contract will be paid to a market participant responding to a Flash Order in a Select or Non- Select Symbols which executes contra a Priority Customer.]Responses to Flash Orders in Non-Select Symbols will be $0.25 per contract for non-Priority Customers and $0.00 for Priority Customers.

18. There will be no fee charged or rebate provided in Non-Select Symbols when trading against Priority Customer Complex Orders that leg into the regular order book.

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Section 6. Other Options Fees and Rebates

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D. Reserved.[Nasdaq ISE Market Maker Discount Tiers

Monthly Volume (contracts)	**Fee**
0 to 250,000	$0.25
250,000+	$0.20

» Discounted fees apply to Nasdaq ISE Market Maker contracts for Regular Orders in Non-Select Symbols. Once a member reaches the highest tier, the fee applicable to that tier will apply retroactively to all Market Maker contracts for Regular Orders in Non-Select Symbols.]

E. Marketing Fee

Symbols	**Fee**
Non-Select Symbols	$0.[70]00*

* No marketing fees are charged for Select and Non-Select Symbols. If the Exchange determines to charge a marketing fee in the future, it will do so pursuant to a rule filing.

» Marketing fees apply to Nasdaq ISE Market Makers for each Regular Priority Customer contract executed except as noted below.

» Marketing fees do not apply to Nasdaq ISE Market Makers for each Regular Priority Customer contract executed in Select Symbols.

» Marketing fees are waived NDX, NQX, 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 Options 2, Section 3(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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