

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 50	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - 2020 - * 39 Amendment No. (req. for Amendments *)
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Filing by Nasdaq ISE, LLC  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
Pilot <input type="checkbox"/>			Rule		
Extension of Time Period for Commission Action * <input type="checkbox"/>		Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input checked="" type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>
	Section 3C(b)(2) * <input type="checkbox"/>

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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**Description**

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

A proposal to amend Options 7, Section 4

**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 \* Angela Last Name \* Dunn  
 Title \* Principal Associate General Counsel  
 E-mail \* angela.dunn@nasdaq.com  
 Telephone \* (215) 496-5692 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.

(Title \*)  
 Date 11/13/2020  
 By John Zecca (Name \*)  
 EVP and Chief Legal Counsel  
 john.zecca@nasdaq.com

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

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

**Form 19b-4 Information \***

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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 \***

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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 \***

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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**

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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**

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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**

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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**

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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**

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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”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to amend Options 7, Section 4, “Complex Order Fees and Rebates,” and Options 7, Section 9, “Legal & Regulatory.”

The Exchange originally filed the proposed pricing change on November 2, 2020 (SR-ISE-2020-37). On November 12, 2020, the Exchange withdrew that filing and is submitting this replacement filing on November 13, 2020.

A notice of the proposed rule change for publication in the Federal Register is attached hereto 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 November 5, 2020. 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:

Angela Saccomandi Dunn  
Principal Associate General Counsel

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

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

Nasdaq, Inc.  
215-496-5692

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

a. Purpose

The Exchange proposes to amend Options 7, Section 4, “Complex Order Fees and Rebates,” and Options 7, Section 9, “Legal & Regulatory.” Each change will be described below.

Options 7, Section 4

*Priority Customer Rebates for Complex Orders*

The Exchange’s proposal to amend Options 7, Section 4, “Complex Order Fees and Rebates” is intended to offer Members an ability to earn higher Priority Customer Complex Order rebates. Specifically, the Exchange proposes to amend Priority Customer Complex Order Tiers 8 and 9 and add a new Tier 10. Today, the Exchange pays rebates to Priority Customers pursuant to the below tier schedule.

**Priority  
Customer  
Rebates**

<b>Priority Customer Complex Tier<sup>(7)</sup> <sup>(13)</sup> <sup>(16)</sup></b>	<b>Total Affiliated Member or Affiliated Entity Complex Order Volume (Excluding Crossing Orders and Responses to Crossing Orders) Calculated as a Percentage of Customer Total Consolidated Volume</b>	<b>Rebate for Select Symbols<sup>(1)</sup></b>	<b>Rebate for Non-Select Symbols<sup>(1)(4)</sup></b>
Tier 1	0.000% - 0.200%	(\$0.25)	(\$0.40)
Tier 2	Above 0.200% - 0.400%	(\$0.30)	(\$0.55)
Tier 3	Above 0.400% - 0.450%	(\$0.35)	(\$0.70)
Tier 4	Above 0.450% - 0.750%	(\$0.40)	(\$0.75)
Tier 5	Above 0.750% - 1.000%	(\$0.45)	(\$0.80)
Tier 6	Above 1.000% - 1.350%	(\$0.47)	(\$0.80)
Tier 7	Above 1.350% - 2.000%	(\$0.48)	(\$0.80)

Tier 8	Above 2.000% - 2.600%	(\$0.50)	(\$0.85)
Tier 9	Above 2.600%	(\$0.52)	(\$0.85)

First, the Exchange proposes to amend the criteria to qualify for Tiers 8 and 9 and certain rebates as discussed below.

Today, Tier 8 of the Complex Order Priority Customer Rebates requires Members to submit above 2.000% - 2.60% of Total Affiliated Member or Affiliated Entity Complex Order Volume (Excluding Crossing Orders and Responses to Crossing Orders) Calculated as a Percentage of Customer Total Consolidated Volume in order to receive a \$0.50 per contract rebate for Select Symbols<sup>3</sup> and an \$0.85 per contract rebate for Non-Select Symbols.<sup>4</sup> The Exchange proposes to amend the qualifications of Tier 8 to require Members to submit above 2.000% - 2.750% of Total Affiliated Member or Affiliated Entity Complex Order Volume (Excluding Crossing Orders and Responses to Crossing Orders) Calculated as a Percentage of Customer Total Consolidated Volume to receive an increased \$0.52 per contract rebate for Select Symbols and continue to receive an \$0.85 per contract rebate for Non-Select Symbols. The Exchange is both amending the qualifications for Tier 8 and increasing the rebate for Select Symbols with this proposal. A Member who qualified for Tier 8 in a prior month, with above 2.000% to 2.60% of Total Affiliated Member or Affiliated Entity Complex Order Volume (Excluding Crossing Orders and Responses to Crossing Orders) Calculated as a Percentage of Customer Total Consolidated Volume (“Current Tier 8 Volume”), would continue to

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<sup>3</sup> “Select Symbols” are options overlying all symbols listed on the Nasdaq ISE that are in the Penny Interval Program. See Options 7, Section 1(b).

<sup>4</sup> “Non-Select Symbols” are options overlying all symbols excluding Select Symbols. See Options 7, Section 1(b).

qualify for Tier 8 rebates with this proposal if that same amount of volume was submitted. The Member would qualify for an increased Tier 8 Rebate for Select Symbols of \$0.52 per contract when submitting Current Tier 8 Volume and the same \$0.85 per contract Tier 8 Rebate for Non-Select Symbols.

Today, Tier 9 of the Complex Order Priority Customer Rebates requires Members to submit above 2.600% of Total Affiliated Member or Affiliated Entity Complex Order Volume (Excluding Crossing Orders and Responses to Crossing Orders) Calculated as a Percentage of Customer Total Consolidated Volume in order to receive a \$0.52 per contract rebate for Select Symbols and an \$0.85 per contract rebate for Non-Select Symbols. The Exchange proposes to amend the qualifications of Tier 9 to require Members to submit above 2.750% - 4.500% of Total Affiliated Member or Affiliated Entity Complex Order Volume (Excluding Crossing Orders and Responses to Crossing Orders) Calculated as a Percentage of Customer Total Consolidated Volume to continue to receive a \$0.52 per contract rebate for Select Symbols and an increased \$0.86 per contract rebate for Non-Select Symbols. The Exchange is both amending the qualifications for Tier 9 and increasing the rebate for Non-Select Symbols with this proposal. A Member who qualified for Tier 9 in a prior month, with above 2.600% of Total Affiliated Member or Affiliated Entity Complex Order Volume (Excluding Crossing Orders and Responses to Crossing Orders) Calculated as a Percentage of Customer Total Consolidated Volume (“Current Tier 9 Volume”), may continue to qualify for Tier 9 rebates with this proposal if the Member submitted greater than 2.750% volume Calculated as a Percentage of Customer Total Consolidated Volume. A Member who submitted the same amount of volume as in the prior month would receive either: (1)

an increased Tier 8 Rebate for Select Symbols of \$0.52 per contract and the same \$0.85 per contract Rebate for Non-Select Symbols; or (2) the same Tier 9 Rebate for Select Symbols of \$0.52 per contract and an increased \$0.86 per contract Rebate for Non-Select Symbols, depending on the Member's volume Calculated as a Percentage of Customer Total Volume. Also, with this proposal, a Member would have the opportunity to qualify for increased Tier 10 rebates of \$0.53 per contract for Select Symbols and \$0.88 per contract for Non-Select Symbols by submitting above 4.500% of Total Affiliated Member or Affiliated Entity Complex Order Volume (Excluding Crossing Orders and Responses to Crossing Orders) Calculated as a Percentage of Customer Total Consolidated Volume.

Second, the Exchange proposes to add a new Priority Customer Complex Order Tier 10 which requires Members to submit above 4.500% of Total Affiliated Member or Affiliated Entity Complex Order Volume (Excluding Crossing Orders and Responses to Crossing Orders) Calculated as a Percentage of Customer Total Consolidated Volume to receive a \$0.53 per contract rebate for Select Symbols and an \$0.88 per contract rebate for Non-Select Symbols. This new Tier 10 would offer Members an opportunity to earn higher Priority Customer Complex Order rebates on ISE.

The Exchange believes that amending Priority Customer Complex Order Rebate Tiers 8 and 9 and adding a new Tier 10 will attract a greater amount of Priority Customer Complex Order volume to ISE.

#### *Maker and Taker Fees for Complex Orders*

Today, the Exchange assesses certain Maker and Taker Fees for Complex Orders transacted on ISE as follows:

**Maker and Taker Fees**

<b>Market Participant</b>	<b>Maker Fee for Select Symbols</b>	<b>Maker Fee for Non-Select Symbols</b>	<b>Maker Fee for Select Symbols when trading against Priority Customer</b>	<b>Maker Fee for non-Select Symbols when trading against Priority Customer</b>	<b>Taker Fee for Select Symbols</b>	<b>Taker Fee for Non-Select Symbols</b>
Market Maker	\$0.10	\$0.20	\$0.47 <sup>(3)</sup>	\$0.86	\$0.50 <sup>(3)</sup>	\$0.86 <sup>(8)</sup>
Non-Nasdaq ISE Market Maker (FarMM)	\$0.20	\$0.20	\$0.48	\$0.88	\$0.50	\$0.88 <sup>(8)</sup>
Firm Proprietary / Broker-Dealer	\$0.10	\$0.20	\$0.48	\$0.88	\$0.50	\$0.88 <sup>(8)</sup>
Professional Customer	\$0.10	\$0.20	\$0.48	\$0.88	\$0.50	\$0.88 <sup>(8)</sup>
Priority Customer	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00

Current note 3 of Options 7, Section 4, which applies to orders for Market Makers who qualify for the Complex Order Maker Fee for Select Symbols when trading against Priority Customer Complex Orders and the Complex Order Taker Fee for Select Symbols, states, “This fee is \$0.47 per contract for Market Makers that achieve Priority Customer Complex Tier 8 and \$0.44 per contract for Market Makers that achieve Priority Customer Complex Tier 9.” Current note 8 of Options 7, Section 4 which applies to Complex Orders of Market Makers, Non-Nasdaq ISE Market Makers (FarMM), Firm Proprietary/Broker-Dealers, and Professional Customers who qualify for the Complex Order Taker Fee for Non-Select Symbols, states, “A \$0.05 per contract surcharge will be assessed to non-Priority Customer Complex Orders that take liquidity from the Complex



Order Book, excluding Complex Orders executed in the Facilitation Mechanism, Solicited Order Mechanism, Price Improvement Mechanism and "exposure" auctions pursuant to Options 3, Section 14(c)(3).”

The Exchange proposes to increase the Complex Order Maker Fees for Select Symbols when trading against Priority Customer for Market Makers from \$0.47 to \$0.50 per contract. The Exchange also proposes to increase the Complex Order Maker Fees for Select Symbols when trading against Priority Customer for Non-Nasdaq ISE Market Makers (FarMM), Firm Proprietary/Broker-Dealers, and Professional Customers from \$0.48 to \$0.50 per contract. Priority Customers would continue to pay no Complex Order Maker Fees for Select Symbols when trading against Priority Customer.

In addition, the Exchange proposes to amend note 3 which is applicable to the aforementioned Complex Order Maker and Taker Fees by instead providing, “This fee is \$0.49 per contract for Market Makers that achieve Priority Customer Complex Tier 8, \$0.47 per contract for Market Makers that achieve Priority Customer Complex Tier 9, and \$0.44 per contract for Market Makers that achieve Priority Customer Complex Tier 10.”

While the Exchange is increasing the Complex Order Maker Fees for Select Symbols when trading against Priority Customers, Market Makers, Non-Nasdaq ISE Market Makers (FarMM), Firm Proprietary/Broker-Dealers, and Professional Customers who qualify for Priority Customer Complex Order Tiers 8 and 9 or new Tier 10, would continue to receive lower Complex Order Maker Fees, which is intended to incentive these Members to transact a greater amount of Priority Customer Complex Orders on ISE.

*Technical Amendments*

The Exchange proposes to remove reserved note 17 within Options 7, Section 4 because this note is not necessary. The Exchange also proposes to remove obsolete date references and an obsolete rate within Options 7, Section 9.C. related to the Options Regulatory Fee. The dates refer to past dates.

b. Statutory Basis

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

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>7</sup>

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

<sup>6</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>7</sup> Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

Likewise, in NetCoalition v. Securities and Exchange Commission<sup>8</sup> (“NetCoalition”) the D.C. Circuit upheld the Commission’s use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.<sup>9</sup> As the court emphasized, the Commission “intended in Regulation NMS that ‘market forces, rather than regulatory requirements’ play a role in determining the market data . . . to be made available to investors and at what cost.”<sup>10</sup>

Further, “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’ . . . .”<sup>11</sup> Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

#### Options 7, Section 4

##### *Priority Customer Rebates for Complex Orders*

The Exchange’s proposal to amend the qualifications of Tier 8, to require Members to submit above 2.000% - 2.750% of Total Affiliated Member or Affiliated

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<sup>8</sup> NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

<sup>9</sup> See NetCoalition, at 534 - 535.

<sup>10</sup> Id. at 537.

<sup>11</sup> Id. at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

Entity Complex Order Volume (Excluding Crossing Orders and Responses to Crossing Orders) Calculated as a Percentage of Customer Total Consolidated Volume in order to receive an increase \$0.52 per contract rebate for Select Symbols and continue to receive an \$0.85 per contract rebate for Non-Select Symbols, and its proposal to amend the qualifications of Tier 9, to require Members to submit above 2.750% - 4.500% of Total Affiliated Member or Affiliated Entity Complex Order Volume (Excluding Crossing Orders and Responses to Crossing Orders) Calculated as a Percentage of Customer Total Consolidated Volume to continue to receive a \$0.52 per contract rebate for Select Symbols and an increased \$0.86 per contract rebate for Non-Select Symbols, are reasonable. The Exchange believes amending Priority Customer Complex Order Tiers 8 and 9 will attract a greater amount of Priority Customer Complex Order volume to ISE. Specifically, Members who desire to qualify for the increased \$0.52 per contract rebate for Select Symbols in Tier 8 or continue to qualify for an \$0.85 per contract rebate for Non-Select Symbols in Tier 8 or Members who desire to continue to qualify for the \$0.52 per contract rebate in Select Symbols for Tier 9 or an increased \$0.86 per contract rebate for Non-Select Symbols in Tier 9 will be encouraged to submit the requisite order flow to obtain the same or higher rebates. With respect to Priority Customer Complex Order Tier 8, the Exchange notes that the proposed amendment should not result in lower rebates for any Member submitting the same Complex Order volume as the Member submitted in the prior month. With respect to Priority Customer Complex Order Tier 9, Members who qualified for Tier 8 in a prior month with Current Tier 8 Volume<sup>12</sup> would continue to

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<sup>12</sup> Today, Tier 8 of the Complex Order Priority Customer Rebates pays rebates to Members who submit above 2.000% - 2.60% of Total Affiliated Member or Affiliated Entity Complex Order Volume (Excluding Crossing Orders and

qualify for Tier 8 rebates with this proposal if that same amount of volume was submitted and would receive an increased Tier 8 Rebate for Select Symbols of \$0.52 per contract and the same \$0.85 per contract Rebate for Non-Select Symbols. In addition, the Member may earn increased Tier 9<sup>13</sup> or Tier 10 rebates if the Member submitted additional qualifying volume. Therefore, the Member would receive the same or higher Tier 8 rebates.

Members who qualified for Tier 9 in a prior month with Current Tier 9 Volume may continue to qualify for Tier 9 rebates with this proposal if the Member submitted greater than 2.750% volume and would receive either: (1) an increased Tier 8 Rebate for Select Symbols of \$0.52 per contract and the same \$0.85 per contract Rebate for Non-Select Symbols; or (2) the same Tier 9 Rebate for Select Symbols of \$0.52 per contract and an increased \$0.86 per contract Rebate for Non-Select Symbols, depending on the Member's volume Calculated as a Percentage of Customer Total Consolidated Volume. Despite the increase required in Complex Order volume for Priority Customer Complex Order Tier 9, the Exchange's proposal offers Members an opportunity to earn the same or higher Tier 9 rebates. Also, with this proposal, a Member would have the opportunity to qualify for increased Tier 10 rebates of \$0.53 per contract for Select Symbols and \$0.88 per contract for Non-Select Symbols by submitting above 4.500% of Total Affiliated

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Responses to Crossing Orders) Calculated as a Percentage of Customer Total Consolidated Volume. With this proposal, Members who submit above 2.000% - 2.750% of Total Affiliated Member or Affiliated Entity Complex Order Volume (Excluding Crossing Orders and Responses to Crossing Orders) Calculated as a Percentage of Customer Total Consolidated Volume are entitled to rebates.

<sup>13</sup> The Exchange notes that the propose Tier 8 Rebate for Select Symbols and the Tier 9 Rebate for Select Symbols, which remains unchanged, are both \$0.52 per contract.

Member or Affiliated Entity Complex Order Volume (Excluding Crossing Orders and Responses to Crossing Orders) Calculated as a Percentage of Customer Total Consolidated Volume. The Priority Customer Complex Order rebate program is optional and available to all Members that choose to transact Complex Order flow on ISE in order to earn a rebate on their Priority Customer Complex Order volume. To the extent the program, as modified, continues to attract Complex Order volume to the Exchange, the Exchange believes that the proposed changes would improve the Exchange's overall competitiveness and strengthen its market quality for all market participants.

The Exchange's proposal to add a new Priority Customer Complex Order Tier 10, which requires Members to submit above 4.500% of Total Affiliated Member or Affiliated Entity Complex Order Volume (Excluding Crossing Orders and Responses to Crossing Orders) Calculated as a Percentage of Customer Total Consolidated Volume in order to receive a \$0.53 per contract rebate for Select Symbols and an \$0.88 per contract rebate for Non-Select Symbols is reasonable. The Exchange believes proposed new Tier 10 will attract a greater amount of Priority Customer Complex Order volume to ISE as the Exchange proposes to pay \$0.53 per contract rebate for Select Symbols and \$0.88 per contract rebate for Non-Select Symbols, the highest Priority Customer Complex Order rebates for that order flow.

The Exchange's proposals to amend the tier qualifications for Priority Customer Complex Order Tiers 8 and 9, increase the Select Symbol rebate in Tier 8, increase the Non-Select Symbol rebate in Tier 9, and add a new Priority Customer Complex Order Tier 10 with rebates of \$0.53 per contract for Select Symbols and \$0.88 per contract for Non-Select Symbols are equitable and not unfairly discriminatory. Any ISE Member

may qualify for a Priority Customer Complex Order rebate tier, provided the qualifications are met. By encouraging all Members to transact significant amounts of Priority Customer Complex Order flow (i.e., to qualify for the higher tiers) in order to earn a higher rebate on their Priority Customer Complex Orders, the Exchange seeks to provide more trading opportunities for all market participants, thereby promoting price discovery, and improving the overall market quality of the Exchange. ISE would uniformly pay rebates to Members that qualified for Priority Customer Complex Order rebates. The Exchange anticipates all Members that currently qualify for the Tier 8 or 9 Priority Customer Complex Order rebates will receive the same or higher rebates with this proposal. Also, any Member may qualify for the new Tier 10 Priority Customer Complex Order rebate to earn even higher rebates. To the extent the proposed changes encourage additional Members to strive for the modified tiers and thus attract more Priority Customer Complex Order volume to the Exchange, this increased order flow would improve the overall quality and attractiveness of the Exchange.

#### *Maker and Taker Fees for Complex Orders*

The Exchange's proposal to increase the Complex Order Maker Fees for Select Symbols when trading against Priority Customer for Market Makers from \$0.47 to \$0.50 per contract and to increase the Complex Order Maker Fees for Select Symbols when trading against Priority Customer for Non-Nasdaq ISE Market Makers (FarMM), Firm Proprietary/Broker-Dealers, and Professional Customers from \$0.48 to \$0.50 per contract is reasonable because while the Exchange is proposing to increase these fees, the Exchange believes that market participants will continue to be incentivized to send Priority Customer order flow to ISE to obtain rebates offered by the Exchange.

Additionally, Market Makers would continue to be offered the opportunity to reduce their Complex Order Maker Fees. If a Market Maker qualifies for Priority Customer Complex Order Tiers 8 and 9, the Complex Order Maker Fee would be reduced to \$0.49 and \$0.47 per contract, respectively. In addition, a Market Maker that qualifies for Priority Customer Complex Order Tier 10 would reduce the Complex Order Maker Fees to \$0.44 per contract. Finally, Priority Customers will continue to pay no Maker Fees for Select Symbols when trading against Priority Customer.

The Exchange's proposal to increase the Complex Order Maker Fees for Select Symbols when trading against Priority Customer for Market Makers from \$0.47 to \$0.50 per contract and to increase the Complex Order Maker Fees for Select Symbols when trading against Priority Customer for Non-Nasdaq ISE Market Makers (FarMM), Firm Proprietary/Broker-Dealers, and Professional Customers from \$0.48 to \$0.50 per contract is equitable and not unfairly discriminatory as all Non-Priority Customers would be assessed the same Complex Order Maker Fees for Select Symbols when trading against Priority Customer. Priority Customer orders bring valuable liquidity to the market which liquidity benefits other market participants. Priority Customers are not assessed Complex Order Maker Fees for Select Symbols when trading against Priority Customer.

The Exchange's proposal to amend note 3 of Options 7, Section 4 with respect to Complex Order Maker Fees for Select Symbols when trading against Priority Customer for Market Makers as well as Complex Order Taker Fees for Select Symbols for Market Makers is reasonable because while the Exchange is reducing the fee discount for



Members who qualify for Priority Customer Complex Order Tiers 8 and 9,<sup>14</sup> Market Makers will continue to have the opportunity to reduce their costs when they qualify for Priority Customer Complex Order Tiers 8 and 9. The Exchange will continue to offer Market Makers the opportunity to reduce Complex Order Maker Fees for Select Symbols when trading against Priority Customers, as well as Complex Order Taker Fees for Select Symbols. The Exchange's proposal also offers Market Makers a fee discount when trading against Priority Customer Complex Orders if the qualifications for new Tier 10 are met.<sup>15</sup>

The Exchange's proposal to amend note 3 of Options 7, Section 4 with respect to Complex Order Maker Fees for Select Symbols when trading against Priority Customer for Market Makers as well as Complex Order Taker Fees for Select Symbols for Market Makers is equitable and not unfairly discriminatory. Market Makers would continue to be permitted to lower their Maker Fees for Select Symbols when trading against Priority Customers, as well as Taker Fees for Select Symbols, provided the Market Maker qualified for Priority Customer Complex Order Tiers 8, 9 or 10. Today, Market Makers are able to lower their Maker Fees for Select Symbols when trading against Priority Customers, as well as Taker Fees for Select Symbols, provided they qualify for Priority Customer Complex Order Tiers 8 or 9. With this proposal Market Makers would also be

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<sup>14</sup> Today, the Exchange offers Market Makers the opportunity to reduce the Complex Order Maker Fee for Select Symbols when trading against Priority Customer and the Complex Order Taker Fee for Select Symbols to \$0.47 per contract for Tier 8 and \$0.44 per contract for Tier 9. With this proposal, the fee discount within note 3 would decrease. The Exchange would offer Market Makers that qualify for Priority Customer Complex Order Tier 8 a rate of \$0.49 per contract, and the Exchange would offer Market Makers that qualify for Priority Customer Complex Order Tier 9 a rate of \$0.47 per contract.

<sup>15</sup> The Exchange would offer Market Makers that qualify for Priority Customer Complex Order Tier 10 a rate of \$0.44 per contract.

able to lower their Maker Fees for Select Symbols when trading against Priority Customers, as well as Taker Fees for Select Symbols, if they qualify for new Priority Customer Complex Order Tier 10. Unlike other market participants, Market Makers have an obligation to maintain quotes<sup>16</sup> and provide liquidity in the regular market. The Exchange is providing Market Makers the opportunity to reduce their Maker Fees for Select Symbols when trading against Priority Customers, as well as Taker Fees for Select Symbols, provided the Market Maker qualified for Priority Customer Complex Order Tiers 8, 9 or 10, to incentivize these market participants to continue to provide liquidity on ISE.

#### *Technical Amendments*

The Exchange's proposal to remove reserved note 17 within Options 7, Section 4 is reasonable, equitable and not unfairly discriminatory as this note is not necessary and the amendment is non-substantive. The Exchange's proposal to remove obsolete date references and an obsolete rate within Options 7, Section 9.C. related to the Options Regulatory Fee is reasonable, equitable and not unfairly discriminatory as the dates have passed and the rate is obsolete.

#### 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.

#### Inter-market Competition

The proposal does not impose an undue burden on inter-market competition. The

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<sup>16</sup> See ISE, Options 2, Section 5.

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

#### Intra-market Competition

The proposed amendments do not impose an undue burden on intra-market competition.

#### Options 7, Section 4

##### *Priority Customer Rebates for Complex Orders*

The Exchange's proposals to amend the tier qualifications for Priority Customer Complex Order Tiers 8 and 9, increase the Select Symbol rebate in Tier 8, increase the Non-Select Symbol rebate in Tier 9, and add a new Priority Customer Complex Order Tier 10 with rebates of \$0.53 per contract for Select Symbols and \$0.88 per contract for Non-Select Symbols does not impose an undue burden on competition. Any ISE Member may qualify for a Priority Customer Complex Order rebate tier, provided the qualifications are met. By encouraging all Members to transact significant amounts of

Priority Customer Complex Order flow (i.e., to qualify for the higher tiers) in order to earn a higher rebate on their Priority Customer Complex Orders, the Exchange seeks to provide more trading opportunities for all market participants, thereby promoting price discovery, and improving the overall market quality of the Exchange. ISE would uniformly pay rebates to Members that qualified for Priority Customer Complex Order rebates. The Exchange anticipates all Members that currently qualify for the Tier 8 Priority Customer Complex Order rebates will receive the same or higher Tier 8 rebates with this proposal. Members that currently qualify for Tier 9 Priority Customer Complex Order rebates may need to submit additional Priority Customer Complex Order flow to continue to qualify for the same or higher Tier 9 rebates. Also, any Member may qualify for the new Tier 10 Priority Customer Complex Order rebate to earn even higher rebates. To the extent the proposed changes encourage additional Members to strive for the modified tiers and thus attract more Priority Customer Complex Order volume to the Exchange, this increased order flow would improve the overall quality and attractiveness of the Exchange.

*Maker and Taker Fees for Complex Orders*

The Exchange's proposal to increase the Complex Order Maker Fees for Select Symbols when trading against Priority Customer for Market Makers from \$0.47 to \$0.50 per contract and to increase the Complex Order Maker Fees for Select Symbols when trading against Priority Customer for Non-Nasdaq ISE Market Makers (FarMM), Firm Proprietary/Broker-Dealers, and Professional Customers from \$0.48 to \$0.50 per contract does not impose an undue burden on competition as all Non-Priority Customers would be assessed the same Complex Order Maker Fees for Select Symbols when trading against

Priority Customer. Priority Customer orders bring valuable liquidity to the market which liquidity benefits other market participants. Priority Customers are not assessed Complex Order Maker Fees for Select Symbols when trading against Priority Customer.

The Exchange's proposal to amend note 3 of Options 7, Section 4 with respect to Complex Order Maker Fees for Select Symbols when trading against Priority Customer for Market Makers as well as Complex Order Taker Fees for Select Symbols for Market Makers does not impose an undue burden on competition. Market Makers would continue to be permitted to lower their Maker Fees for Select Symbols when trading against Priority Customers, as well as Taker Fees for Select Symbols, provided the Market Maker qualified for Priority Customer Complex Order Tiers 8, 9 or 10. Today, Market Makers are able to lower their Maker Fees for Select Symbols when trading against Priority Customers, as well as Taker Fees for Select Symbols, provided they qualify for Priority Customer Complex Order Tiers 8 or 9. With this proposal Market Makers would also be able to lower their Maker Fees for Select Symbols when trading against Priority Customers, as well as Taker Fees for Select Symbols, if they qualify for new Priority Customer Complex Order Tier 10. Unlike other market participants, Market Makers have an obligation to maintain quotes<sup>17</sup> and provide liquidity in the regular market. The Exchange is providing Market Makers the opportunity to reduce their Maker Fees for Select Symbols when trading against Priority Customers, as well as Taker Fees for Select Symbols, provided the Market Maker qualified for Priority Customer Complex Order Tiers 8, 9 or 10, to incentivize these market participants to continue to provide liquidity on ISE.

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<sup>17</sup> See ISE, Options 2, Section 5.

*Technical Amendments*

The Exchange's proposal to remove reserved note 17 within Options 7, Section 4 does not impose an undue burden on competition as this note is not necessary and the amendment is non-substantive. The Exchange's proposal to remove obsolete date references and an obsolete rate within Options 7, Section 9.C. related to the Options Regulatory Fee does not impose an undue burden on competition.

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

The Exchange does not consent to an extension of the time period for Commission action.

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,<sup>18</sup> the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If

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<sup>18</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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-2020-39)

November \_\_, 2020

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to an Amendment to Options 7, Section 4 and Options 7, Section 9

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup>, and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 13, 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 Options 7, Section 4, “Complex Order Fees and Rebates,” and Options 7, Section 9, “Legal & Regulatory.”

The Exchange originally filed the proposed pricing change on November 2, 2020 (SR-ISE-2020-37). On November 12, 2020, the Exchange withdrew that filing and is submitting this replacement filing on November 13, 2020.

The text of the proposed rule change is available on the Exchange’s Website at <https://listingcenter.nasdaq.com/rulebook/ise/rules>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

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



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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange proposes to amend Options 7, Section 4, “Complex Order Fees and Rebates,” and Options 7, Section 9, “Legal & Regulatory.” Each change will be described below.

Options 7, Section 4

*Priority Customer Rebates for Complex Orders*

The Exchange’s proposal to amend Options 7, Section 4, “Complex Order Fees and Rebates” is intended to offer Members an ability to earn higher Priority Customer Complex Order rebates. Specifically, the Exchange proposes to amend Priority Customer Complex Order Tiers 8 and 9 and add a new Tier 10. Today, the Exchange pays rebates to Priority Customers pursuant to the below tier schedule.

**Priority  
Customer  
Rebates**

<b>Priority Customer Complex Tier<sup>(7)</sup> <sup>(13)</sup> <sup>(16)</sup></b>	<b>Total Affiliated Member or Affiliated Entity Complex Order Volume (Excluding Crossing Orders and Responses to Crossing Orders) Calculated as a Percentage of Customer</b>	<b>Rebate for Select Symbols<sup>(1)</sup></b>	<b>Rebate for Non-Select Symbols<sup>(1)(4)</sup></b>
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	<b>Total Consolidated Volume</b>		
Tier 1	0.000% - 0.200%	(\$0.25)	(\$0.40)
Tier 2	Above 0.200% - 0.400%	(\$0.30)	(\$0.55)
Tier 3	Above 0.400% - 0.450%	(\$0.35)	(\$0.70)
Tier 4	Above 0.450% - 0.750%	(\$0.40)	(\$0.75)
Tier 5	Above 0.750% - 1.000%	(\$0.45)	(\$0.80)
Tier 6	Above 1.000% - 1.350%	(\$0.47)	(\$0.80)
Tier 7	Above 1.350% - 2.000%	(\$0.48)	(\$0.80)
Tier 8	Above 2.000% - 2.600%	(\$0.50)	(\$0.85)
Tier 9	Above 2.600%	(\$0.52)	(\$0.85)

First, the Exchange proposes to amend the criteria to qualify for Tiers 8 and 9 and certain rebates as discussed below.

Today, Tier 8 of the Complex Order Priority Customer Rebates requires Members to submit above 2.000% - 2.60% of Total Affiliated Member or Affiliated Entity Complex Order Volume (Excluding Crossing Orders and Responses to Crossing Orders) Calculated as a Percentage of Customer Total Consolidated Volume in order to receive a \$0.50 per contract rebate for Select Symbols<sup>3</sup> and an \$0.85 per contract rebate for Non-Select Symbols.<sup>4</sup> The Exchange proposes to amend the qualifications of Tier 8 to require Members to submit above 2.000% - 2.750% of Total Affiliated Member or Affiliated Entity Complex Order Volume (Excluding Crossing Orders and Responses to Crossing Orders) Calculated as a Percentage of Customer Total Consolidated Volume to receive an increased \$0.52 per contract rebate for Select Symbols and continue to receive an \$0.85 per contract rebate for Non-Select Symbols. The Exchange is both amending the

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<sup>3</sup> “Select Symbols” are options overlying all symbols listed on the Nasdaq ISE that are in the Penny Interval Program. See Options 7, Section 1(b).

<sup>4</sup> “Non-Select Symbols” are options overlying all symbols excluding Select Symbols. See Options 7, Section 1(b).

qualifications for Tier 8 and increasing the rebate for Select Symbols with this proposal. A Member who qualified for Tier 8 in a prior month, with above 2.000% to 2.60% of Total Affiliated Member or Affiliated Entity Complex Order Volume (Excluding Crossing Orders and Responses to Crossing Orders) Calculated as a Percentage of Customer Total Consolidated Volume (“Current Tier 8 Volume”), would continue to qualify for Tier 8 rebates with this proposal if that same amount of volume was submitted. The Member would qualify for an increased Tier 8 Rebate for Select Symbols of \$0.52 per contract when submitting Current Tier 8 Volume and the same \$0.85 per contract Tier 8 Rebate for Non-Select Symbols.

Today, Tier 9 of the Complex Order Priority Customer Rebates requires Members to submit above 2.600% of Total Affiliated Member or Affiliated Entity Complex Order Volume (Excluding Crossing Orders and Responses to Crossing Orders) Calculated as a Percentage of Customer Total Consolidated Volume in order to receive a \$0.52 per contract rebate for Select Symbols and an \$0.85 per contract rebate for Non-Select Symbols. The Exchange proposes to amend the qualifications of Tier 9 to require Members to submit above 2.750% - 4.500% of Total Affiliated Member or Affiliated Entity Complex Order Volume (Excluding Crossing Orders and Responses to Crossing Orders) Calculated as a Percentage of Customer Total Consolidated Volume to continue to receive a \$0.52 per contract rebate for Select Symbols and an increased \$0.86 per contract rebate for Non-Select Symbols. The Exchange is both amending the qualifications for Tier 9 and increasing the rebate for Non-Select Symbols with this proposal. A Member who qualified for Tier 9 in a prior month, with above 2.600% of Total Affiliated Member or Affiliated Entity Complex Order Volume (Excluding

Crossing Orders and Responses to Crossing Orders) Calculated as a Percentage of Customer Total Consolidated Volume (“Current Tier 9 Volume”), may continue to qualify for Tier 9 rebates with this proposal if the Member submitted greater than 2.750% volume Calculated as a Percentage of Customer Total Consolidated Volume. A Member who submitted the same amount of volume as in the prior month would receive either: (1) an increased Tier 8 Rebate for Select Symbols of \$0.52 per contract and the same \$0.85 per contract Rebate for Non-Select Symbols; or (2) the same Tier 9 Rebate for Select Symbols of \$0.52 per contract and an increased \$0.86 per contract Rebate for Non-Select Symbols, depending on the Member’s volume Calculated as a Percentage of Customer Total Volume. Also, with this proposal, a Member would have the opportunity to qualify for increased Tier 10 rebates of \$0.53 per contract for Select Symbols and \$0.88 per contract for Non-Select Symbols by submitting above 4.500% of Total Affiliated Member or Affiliated Entity Complex Order Volume (Excluding Crossing Orders and Responses to Crossing Orders) Calculated as a Percentage of Customer Total Consolidated Volume.

Second, the Exchange proposes to add a new Priority Customer Complex Order Tier 10 which requires Members to submit above 4.500% of Total Affiliated Member or Affiliated Entity Complex Order Volume (Excluding Crossing Orders and Responses to Crossing Orders) Calculated as a Percentage of Customer Total Consolidated Volume to receive a \$0.53 per contract rebate for Select Symbols and an \$0.88 per contract rebate for Non-Select Symbols. This new Tier 10 would offer Members an opportunity to earn higher Priority Customer Complex Order rebates on ISE.

The Exchange believes that amending Priority Customer Complex Order Rebate Tiers 8 and 9 and adding a new Tier 10 will attract a greater amount of Priority Customer Complex Order volume to ISE.

*Maker and Taker Fees for Complex Orders*

Today, the Exchange assesses certain Maker and Taker Fees for Complex Orders transacted on ISE as follows:

**Maker and Taker Fees**

<b>Market Participant</b>	<b>Maker Fee for Select Symbols</b>	<b>Maker Fee for Non-Select Symbols</b>	<b>Maker Fee for Select Symbols when trading against Priority Customer</b>	<b>Maker Fee for non-Select Symbols when trading against Priority Customer</b>	<b>Taker Fee for Select Symbols</b>	<b>Taker Fee for Non-Select Symbols</b>
Market Maker	\$0.10	\$0.20	\$0.47 <sup>(3)</sup>	\$0.86	\$0.50 <sup>(3)</sup>	\$0.86 <sup>(8)</sup>
Non-Nasdaq ISE Market Maker (FarMM) Firm Proprietary / Broker-Dealer	\$0.20	\$0.20	\$0.48	\$0.88	\$0.50	\$0.88 <sup>(8)</sup>
Professional Customer	\$0.10	\$0.20	\$0.48	\$0.88	\$0.50	\$0.88 <sup>(8)</sup>
Priority Customer	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00

Current note 3 of Options 7, Section 4, which applies to orders for Market Makers who qualify for the Complex Order Maker Fee for Select Symbols when trading against Priority Customer Complex Orders and the Complex Order Taker Fee for Select Symbols, states, “This fee is \$0.47 per contract for Market Makers that achieve Priority Customer Complex Tier 8 and \$0.44 per contract for Market Makers that achieve Priority

Customer Complex Tier 9.” Current note 8 of Options 7, Section 4 which applies to Complex Orders of Market Makers, Non-Nasdaq ISE Market Makers (FarMM), Firm Proprietary/Broker-Dealers, and Professional Customers who qualify for the Complex Order Taker Fee for Non-Select Symbols, states, “A \$0.05 per contract surcharge will be assessed to non-Priority Customer Complex Orders that take liquidity from the Complex Order Book, excluding Complex Orders executed in the Facilitation Mechanism, Solicited Order Mechanism, Price Improvement Mechanism and "exposure" auctions pursuant to Options 3, Section 14(c)(3).”

The Exchange proposes to increase the Complex Order Maker Fees for Select Symbols when trading against Priority Customer for Market Makers from \$0.47 to \$0.50 per contract. The Exchange also proposes to increase the Complex Order Maker Fees for Select Symbols when trading against Priority Customer for Non-Nasdaq ISE Market Makers (FarMM), Firm Proprietary/Broker-Dealers, and Professional Customers from \$0.48 to \$0.50 per contract. Priority Customers would continue to pay no Complex Order Maker Fees for Select Symbols when trading against Priority Customer.

In addition, the Exchange proposes to amend note 3 which is applicable to the aforementioned Complex Order Maker and Taker Fees by instead providing, “This fee is \$0.49 per contract for Market Makers that achieve Priority Customer Complex Tier 8, \$0.47 per contract for Market Makers that achieve Priority Customer Complex Tier 9, and \$0.44 per contract for Market Makers that achieve Priority Customer Complex Tier 10.”

While the Exchange is increasing the Complex Order Maker Fees for Select Symbols when trading against Priority Customers, Market Makers, Non-Nasdaq ISE

Market Makers (FarMM), Firm Proprietary/Broker-Dealers, and Professional Customers who qualify for Priority Customer Complex Order Tiers 8 and 9 or new Tier 10, would continue to receive lower Complex Order Maker Fees, which is intended to incentive these Members to transact a greater amount of Priority Customer Complex Orders on ISE.

#### *Technical Amendments*

The Exchange proposes to remove reserved note 17 within Options 7, Section 4 because this note is not necessary. The Exchange also proposes to remove obsolete date references and an obsolete rate within Options 7, Section 9.C. related to the Options Regulatory Fee. The dates refer to past dates.

#### 2. Statutory Basis

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

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the

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

<sup>6</sup> 15 U.S.C. 78f(b)(4) and (5).

market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>7</sup>

Likewise, in NetCoalition v. Securities and Exchange Commission<sup>8</sup> (“NetCoalition”) the D.C. Circuit upheld the Commission’s use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.<sup>9</sup> As the court emphasized, the Commission “intended in Regulation NMS that ‘market forces, rather than regulatory requirements’ play a role in determining the market data . . . to be made available to investors and at what cost.”<sup>10</sup>

Further, “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’ . . .”<sup>11</sup> Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

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<sup>7</sup> Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

<sup>8</sup> NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

<sup>9</sup> See NetCoalition, at 534 - 535.

<sup>10</sup> Id. at 537.

<sup>11</sup> Id. at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).



Options 7, Section 4*Priority Customer Rebates for Complex Orders*

The Exchange's proposal to amend the qualifications of Tier 8, to require Members to submit above 2.000% - 2.750% of Total Affiliated Member or Affiliated Entity Complex Order Volume (Excluding Crossing Orders and Responses to Crossing Orders) Calculated as a Percentage of Customer Total Consolidated Volume in order to receive an increase \$0.52 per contract rebate for Select Symbols and continue to receive an \$0.85 per contract rebate for Non-Select Symbols, and its proposal to amend the qualifications of Tier 9, to require Members to submit above 2.750% - 4.500% of Total Affiliated Member or Affiliated Entity Complex Order Volume (Excluding Crossing Orders and Responses to Crossing Orders) Calculated as a Percentage of Customer Total Consolidated Volume to continue to receive a \$0.52 per contract rebate for Select Symbols and an increased \$0.86 per contract rebate for Non-Select Symbols, are reasonable. The Exchange believes amending Priority Customer Complex Order Tiers 8 and 9 will attract a greater amount of Priority Customer Complex Order volume to ISE. Specifically, Members who desire to qualify for the increased \$0.52 per contract rebate for Select Symbols in Tier 8 or continue to qualify for an \$0.85 per contract rebate for Non-Select Symbols in Tier 8 or Members who desire to continue to qualify for the \$0.52 per contract rebate in Select Symbols for Tier 9 or an increased \$0.86 per contract rebate for Non-Select Symbols in Tier 9 will be encouraged to submit the requisite order flow to obtain the same or higher rebates. With respect to Priority Customer Complex Order Tier 8, the Exchange notes that the proposed amendment should not result in lower rebates for any Member submitting the same Complex Order volume as the Member submitted in

the prior month. With respect to Priority Customer Complex Order Tier 9, Members who qualified for Tier 8 in a prior month with Current Tier 8 Volume<sup>12</sup> would continue to qualify for Tier 8 rebates with this proposal if that same amount of volume was submitted and would receive an increased Tier 8 Rebate for Select Symbols of \$0.52 per contract and the same \$0.85 per contract Rebate for Non-Select Symbols. In addition, the Member may earn increased Tier 9<sup>13</sup> or Tier 10 rebates if the Member submitted additional qualifying volume. Therefore, the Member would receive the same or higher Tier 8 rebates.

Members who qualified for Tier 9 in a prior month with Current Tier 9 Volume may continue to qualify for Tier 9 rebates with this proposal if the Member submitted greater than 2.750% volume and would receive either: (1) an increased Tier 8 Rebate for Select Symbols of \$0.52 per contract and the same \$0.85 per contract Rebate for Non-Select Symbols; or (2) the same Tier 9 Rebate for Select Symbols of \$0.52 per contract and an increased \$0.86 per contract Rebate for Non-Select Symbols, depending on the Member's volume Calculated as a Percentage of Customer Total Consolidated Volume. Despite the increase required in Complex Order volume for Priority Customer Complex Order Tier 9, the Exchange's proposal offers Members an opportunity to earn the same or

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<sup>12</sup> Today, Tier 8 of the Complex Order Priority Customer Rebates pays rebates to Members who submit above 2.000% - 2.60% of Total Affiliated Member or Affiliated Entity Complex Order Volume (Excluding Crossing Orders and Responses to Crossing Orders) Calculated as a Percentage of Customer Total Consolidated Volume. With this proposal, Members who submit above 2.000% - 2.750% of Total Affiliated Member or Affiliated Entity Complex Order Volume (Excluding Crossing Orders and Responses to Crossing Orders) Calculated as a Percentage of Customer Total Consolidated Volume are entitled to rebates.

<sup>13</sup> The Exchange notes that the propose Tier 8 Rebate for Select Symbols and the Tier 9 Rebate for Select Symbols, which remains unchanged, are both \$0.52 per contract.

higher Tier 9 rebates. Also, with this proposal, a Member would have the opportunity to qualify for increased Tier 10 rebates of \$0.53 per contract for Select Symbols and \$0.88 per contract for Non-Select Symbols by submitting above 4.500% of Total Affiliated Member or Affiliated Entity Complex Order Volume (Excluding Crossing Orders and Responses to Crossing Orders) Calculated as a Percentage of Customer Total Consolidated Volume. The Priority Customer Complex Order rebate program is optional and available to all Members that choose to transact Complex Order flow on ISE in order to earn a rebate on their Priority Customer Complex Order volume. To the extent the program, as modified, continues to attract Complex Order volume to the Exchange, the Exchange believes that the proposed changes would improve the Exchange's overall competitiveness and strengthen its market quality for all market participants.

The Exchange's proposal to add a new Priority Customer Complex Order Tier 10, which requires Members to submit above 4.500% of Total Affiliated Member or Affiliated Entity Complex Order Volume (Excluding Crossing Orders and Responses to Crossing Orders) Calculated as a Percentage of Customer Total Consolidated Volume in order to receive a \$0.53 per contract rebate for Select Symbols and an \$0.88 per contract rebate for Non-Select Symbols is reasonable. The Exchange believes proposed new Tier 10 will attract a greater amount of Priority Customer Complex Order volume to ISE as the Exchange proposes to pay \$0.53 per contract rebate for Select Symbols and \$0.88 per contract rebate for Non-Select Symbols, the highest Priority Customer Complex Order rebates for that order flow.

The Exchange's proposals to amend the tier qualifications for Priority Customer Complex Order Tiers 8 and 9, increase the Select Symbol rebate in Tier 8, increase the

Non-Select Symbol rebate in Tier 9, and add a new Priority Customer Complex Order Tier 10 with rebates of \$0.53 per contract for Select Symbols and \$0.88 per contract for Non-Select Symbols are equitable and not unfairly discriminatory. Any ISE Member may qualify for a Priority Customer Complex Order rebate tier, provided the qualifications are met. By encouraging all Members to transact significant amounts of Priority Customer Complex Order flow (i.e., to qualify for the higher tiers) in order to earn a higher rebate on their Priority Customer Complex Orders, the Exchange seeks to provide more trading opportunities for all market participants, thereby promoting price discovery, and improving the overall market quality of the Exchange. ISE would uniformly pay rebates to Members that qualified for Priority Customer Complex Order rebates. The Exchange anticipates all Members that currently qualify for the Tier 8 or 9 Priority Customer Complex Order rebates will receive the same or higher rebates with this proposal. Also, any Member may qualify for the new Tier 10 Priority Customer Complex Order rebate to earn even higher rebates. To the extent the proposed changes encourage additional Members to strive for the modified tiers and thus attract more Priority Customer Complex Order volume to the Exchange, this increased order flow would improve the overall quality and attractiveness of the Exchange.

*Maker and Taker Fees for Complex Orders*

The Exchange's proposal to increase the Complex Order Maker Fees for Select Symbols when trading against Priority Customer for Market Makers from \$0.47 to \$0.50 per contract and to increase the Complex Order Maker Fees for Select Symbols when trading against Priority Customer for Non-Nasdaq ISE Market Makers (FarMM), Firm Proprietary/Broker-Dealers, and Professional Customers from \$0.48 to \$0.50 per contract

is reasonable because while the Exchange is proposing to increase these fees, the Exchange believes that market participants will continue to be incentivized to send Priority Customer order flow to ISE to obtain rebates offered by the Exchange. Additionally, Market Makers would continue to be offered the opportunity to reduce their Complex Order Maker Fees. If a Market Maker qualifies for Priority Customer Complex Order Tiers 8 and 9, the Complex Order Maker Fee would be reduced to \$0.49 and \$0.47 per contract, respectively. In addition, a Market Maker that qualifies for Priority Customer Complex Order Tier 10 would reduce the Complex Order Maker Fees to \$0.44 per contract. Finally, Priority Customers will continue to pay no Maker Fees for Select Symbols when trading against Priority Customer.

The Exchange's proposal to increase the Complex Order Maker Fees for Select Symbols when trading against Priority Customer for Market Makers from \$0.47 to \$0.50 per contract and to increase the Complex Order Maker Fees for Select Symbols when trading against Priority Customer for Non-Nasdaq ISE Market Makers (FarMM), Firm Proprietary/Broker-Dealers, and Professional Customers from \$0.48 to \$0.50 per contract is equitable and not unfairly discriminatory as all Non-Priority Customers would be assessed the same Complex Order Maker Fees for Select Symbols when trading against Priority Customer. Priority Customer orders bring valuable liquidity to the market which liquidity benefits other market participants. Priority Customers are not assessed Complex Order Maker Fees for Select Symbols when trading against Priority Customer.

The Exchange's proposal to amend note 3 of Options 7, Section 4 with respect to Complex Order Maker Fees for Select Symbols when trading against Priority Customer for Market Makers as well as Complex Order Taker Fees for Select Symbols for Market

Makers is reasonable because while the Exchange is reducing the fee discount for Members who qualify for Priority Customer Complex Order Tiers 8 and 9,<sup>14</sup> Market Makers will continue to have the opportunity to reduce their costs when they qualify for Priority Customer Complex Order Tiers 8 and 9. The Exchange will continue to offer Market Makers the opportunity to reduce Complex Order Maker Fees for Select Symbols when trading against Priority Customers, as well as Complex Order Taker Fees for Select Symbols. The Exchange's proposal also offers Market Makers a fee discount when trading against Priority Customer Complex Orders if the qualifications for new Tier 10 are met.<sup>15</sup>

The Exchange's proposal to amend note 3 of Options 7, Section 4 with respect to Complex Order Maker Fees for Select Symbols when trading against Priority Customer for Market Makers as well as Complex Order Taker Fees for Select Symbols for Market Makers is equitable and not unfairly discriminatory. Market Makers would continue to be permitted to lower their Maker Fees for Select Symbols when trading against Priority Customers, as well as Taker Fees for Select Symbols, provided the Market Maker qualified for Priority Customer Complex Order Tiers 8, 9 or 10. Today, Market Makers are able to lower their Maker Fees for Select Symbols when trading against Priority

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<sup>14</sup> Today, the Exchange offers Market Makers the opportunity to reduce the Complex Order Maker Fee for Select Symbols when trading against Priority Customer and the Complex Order Taker Fee for Select Symbols to \$0.47 per contract for Tier 8 and \$0.44 per contract for Tier 9. With this proposal, the fee discount within note 3 would decrease. The Exchange would offer Market Makers that qualify for Priority Customer Complex Order Tier 8 a rate of \$0.49 per contract, and the Exchange would offer Market Makers that qualify for Priority Customer Complex Order Tier 9 a rate of \$0.47 per contract.

<sup>15</sup> The Exchange would offer Market Makers that qualify for Priority Customer Complex Order Tier 10 a rate of \$0.44 per contract.

Customers, as well as Taker Fees for Select Symbols, provided they qualify for Priority Customer Complex Order Tiers 8 or 9. With this proposal Market Makers would also be able to lower their Maker Fees for Select Symbols when trading against Priority Customers, as well as Taker Fees for Select Symbols, if they qualify for new Priority Customer Complex Order Tier 10. Unlike other market participants, Market Makers have an obligation to maintain quotes<sup>16</sup> and provide liquidity in the regular market. The Exchange is providing Market Makers the opportunity to reduce their Maker Fees for Select Symbols when trading against Priority Customers, as well as Taker Fees for Select Symbols, provided the Market Maker qualified for Priority Customer Complex Order Tiers 8, 9 or 10, to incentivize these market participants to continue to provide liquidity on ISE.

*Technical Amendments*

The Exchange's proposal to remove reserved note 17 within Options 7, Section 4 is reasonable, equitable and not unfairly discriminatory as this note is not necessary and the amendment is non-substantive. The Exchange's proposal to remove obsolete date references and an obsolete rate within Options 7, Section 9.C. related to the Options Regulatory Fee is reasonable, equitable and not unfairly discriminatory as the dates have passed and the rate is obsolete.

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.

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<sup>16</sup> See ISE, Options 2, Section 5.

### Inter-market Competition

The proposal does not impose an undue burden on inter-market competition. The Exchange believes its proposal remains competitive with other options markets and will offer market participants with another choice of where to transact options. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

### Intra-market Competition

The proposed amendments do not impose an undue burden on intra-market competition.

### Options 7, Section 4

#### *Priority Customer Rebates for Complex Orders*

The Exchange's proposals to amend the tier qualifications for Priority Customer Complex Order Tiers 8 and 9, increase the Select Symbol rebate in Tier 8, increase the Non-Select Symbol rebate in Tier 9, and add a new Priority Customer Complex Order Tier 10 with rebates of \$0.53 per contract for Select Symbols and \$0.88 per contract for Non-Select Symbols does not impose an undue burden on competition. Any ISE



Member may qualify for a Priority Customer Complex Order rebate tier, provided the qualifications are met. By encouraging all Members to transact significant amounts of Priority Customer Complex Order flow (i.e., to qualify for the higher tiers) in order to earn a higher rebate on their Priority Customer Complex Orders, the Exchange seeks to provide more trading opportunities for all market participants, thereby promoting price discovery, and improving the overall market quality of the Exchange. ISE would uniformly pay rebates to Members that qualified for Priority Customer Complex Order rebates. The Exchange anticipates all Members that currently qualify for the Tier 8 Priority Customer Complex Order rebates will receive the same or higher Tier 8 rebates with this proposal. Members that currently qualify for Tier 9 Priority Customer Complex Order rebates may need to submit additional Priority Customer Complex Order flow to continue to qualify for the same or higher Tier 9 rebates. Also, any Member may qualify for the new Tier 10 Priority Customer Complex Order rebate to earn even higher rebates. To the extent the proposed changes encourage additional Members to strive for the modified tiers and thus attract more Priority Customer Complex Order volume to the Exchange, this increased order flow would improve the overall quality and attractiveness of the Exchange. .

*Maker and Taker Fees for Complex Orders*

The Exchange's proposal to increase the Complex Order Maker Fees for Select Symbols when trading against Priority Customer for Market Makers from \$0.47 to \$0.50 per contract and to increase the Complex Order Maker Fees for Select Symbols when trading against Priority Customer for Non-Nasdaq ISE Market Makers (FarMM), Firm Proprietary/Broker-Dealers, and Professional Customers from \$0.48 to \$0.50 per contract

does not impose an undue burden on competition as all Non-Priority Customers would be assessed the same Complex Order Maker Fees for Select Symbols when trading against Priority Customer. Priority Customer orders bring valuable liquidity to the market which liquidity benefits other market participants. Priority Customers are not assessed Complex Order Maker Fees for Select Symbols when trading against Priority Customer.

The Exchange's proposal to amend note 3 of Options 7, Section 4 with respect to Complex Order Maker Fees for Select Symbols when trading against Priority Customer for Market Makers as well as Complex Order Taker Fees for Select Symbols for Market Makers does not impose an undue burden on competition. Market Makers would continue to be permitted to lower their Maker Fees for Select Symbols when trading against Priority Customers, as well as Taker Fees for Select Symbols, provided the Market Maker qualified for Priority Customer Complex Order Tiers 8, 9 or 10. Today, Market Makers are able to lower their Maker Fees for Select Symbols when trading against Priority Customers, as well as Taker Fees for Select Symbols, provided they qualify for Priority Customer Complex Order Tiers 8 or 9. With this proposal Market Makers would also be able to lower their Maker Fees for Select Symbols when trading against Priority Customers, as well as Taker Fees for Select Symbols, if they qualify for new Priority Customer Complex Order Tier 10. Unlike other market participants, Market Makers have an obligation to maintain quotes<sup>17</sup> and provide liquidity in the regular market. The Exchange is providing Market Makers the opportunity to reduce their Maker Fees for Select Symbols when trading against Priority Customers, as well as Taker Fees for Select Symbols, provided the Market Maker qualified for Priority Customer Complex

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<sup>17</sup> See ISE, Options 2, Section 5.

Order Tiers 8, 9 or 10, to incentivize these market participants to continue to provide liquidity on ISE.

*Technical Amendments*

The Exchange's proposal to remove reserved note 17 within Options 7, Section 4 does not impose an undue burden on competition as this note is not necessary and the amendment is non-substantive. The Exchange's proposal to remove obsolete date references and an obsolete rate within Options 7, Section 9.C. related to the Options Regulatory Fee does not impose an undue burden on competition.

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.<sup>18</sup> At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (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.

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<sup>18</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-ISE-2020-39 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-ISE-2020-39. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet 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-2020-39 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.<sup>19</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>19</sup> 17 CFR 200.30-3(a)(12).

**EXHIBIT 5**

*New text is underlined; deleted text is in brackets.*

**NASDAQ ISE, LLC Rules**

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**Options Rules**

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**Options 7 Pricing Schedule**

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**Section 4. Complex Order Fees and Rebates<sup>(5) (12) (15)</sup>**

**Priority Customer Rebates**

<b>Priority Customer Complex Tier<sup>(7) (13) (16)</sup></b>	<b>Total Affiliated Member or Affiliated Entity Complex Order Volume (Excluding Crossing Orders and Responses to Crossing Orders) Calculated as a Percentage of Customer Total Consolidated Volume</b>	<b>Rebate for Select Symbols<sup>(1)</sup></b>	<b>Rebate for Non-Select Symbols<sup>(1)(4)</sup></b>
Tier 1	0.000% - 0.200%	(\$0.25)	(\$0.40)
Tier 2	Above 0.200% - 0.400%	(\$0.30)	(\$0.55)
Tier 3	Above 0.400% - 0.450%	(\$0.35)	(\$0.70)
Tier 4	Above 0.450% - 0.750%	(\$0.40)	(\$0.75)
Tier 5	Above 0.750% - 1.000%	(\$0.45)	(\$0.80)
Tier 6	Above 1.000% - 1.350%	(\$0.47)	(\$0.80)
Tier 7	Above 1.350% -	(\$0.48)	(\$0.80)

	2.000%		
Tier 8	Above 2.000% - [2.60]2.750%	(\$0.5[0]2)	(\$0.85)
Tier 9	Above [2.600%]2.750%- 4.500%	(\$0.52)	(\$0.8[5]6)
<u>Tier 10</u>	<u>Above 4.500%</u>	<u>(\$0.53)</u>	<u>(\$0.88)</u>

### Maker and Taker Fees

Market Participant	Maker Fee for Select Symbols	Maker Fee for Non-Select Symbols	Maker Fee for Select Symbols when trading against Priority Customer	Maker Fee for non-Select Symbols when trading against Priority Customer	Taker Fee for Select Symbols	Taker Fee for Non-Select Symbols
Market Maker	\$0.10	\$0.20	\$0.[47]50 <sup>(3)</sup>	\$0.86	\$0.50 <sup>(3)</sup>	\$0.86 <sup>(8)</sup>
Non-Nasdaq ISE Market Maker (FarMM)	\$0.20	\$0.20	\$0.[48]50	\$0.88	\$0.50	\$0.88 <sup>(8)</sup>
Firm Proprietary / Broker-Dealer	\$0.10	\$0.20	\$0.[48]50	\$0.88	\$0.50	\$0.88 <sup>(8)</sup>
Professional Customer	\$0.10	\$0.20	\$0.[48]50	\$0.88	\$0.50	\$0.88 <sup>(8)</sup>
Priority Customer	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00

### Crossing Order Fees and Rebates

Market Participant	Fee for Crossing Orders Except PIM Orders <sup>(6)(10)</sup> (11)	Fee for PIM Orders <sup>(6)(9)</sup> (11)	Fee for Crossing Orders Except PIM Orders for Select Symbols	Fee for Crossing Orders Except PIM Orders for non-Select Symbols	Fee for Responses to PIM or Select Symbols	Fee for Responses to PIM Orders for Non-Select Symbols <sup>(2)</sup>	Facilitation and Solicitation Breakup for Select Symbols <sup>(2)</sup>	Facilitation and Solicitation Breakup for Non-Select Symbols <sup>(2)</sup>
Market	\$0.20	\$0.10	\$0.50	\$1.10	\$0.50	\$1.10	N/A	N/A

Maker Non- Nasdaq ISE Market Maker (FarMM)	\$0.20	\$0.10	\$0.50	\$1.10	\$0.50	\$1.10	(\$0.15)	(\$0.15)
Firm Proprietar y / Broker- Dealer	\$0.20	\$0.10	\$0.50	\$1.10	\$0.50	\$1.10	(\$0.15)	(\$0.15)
Professio nal Customer	\$0.20 <sup>(14)</sup>	\$0.10	\$0.50	\$1.10	\$0.50	\$1.10	(\$0.15)	(\$0.15)
Priority Customer	\$0.00	\$0.00	\$0.50	\$1.10	\$0.50	\$1.10	(\$0.15)	(\$0.15)

1. Rebate provided per contract per leg if the order trades with non-Priority Customer orders in the Complex Order Book. Rebate provided per contract leg in Select Symbols where the largest leg of the Complex Order is under fifty (50) contracts and trades with quotes and orders on the regular order book. No Priority Customer Complex Order rebates will be provided in Select Symbols if any leg of the order that trades with interest on the regular order book is fifty (50) contracts or more. No Priority Customer Complex Order rebates will be provided in Non-Select Symbols if any leg of the order trades with interest on the regular order book, irrespective of order size.

2. Rebate provided per contract per leg for contracts that are submitted to Facilitation and Solicitation Mechanisms that do not trade with their contra order except when those contracts trade against pre-existing orders and quotes on the Exchange's orderbooks. The applicable fee is applied to any contracts for which a rebate is provided.

3. This fee is \$0.4[7]9 per contract for Market Makers that achieve Priority Customer Complex Tier 8, [ and] \$0.4[4]7 per contract for Market Makers that achieve Priority Customer Complex Tier 9 [ . ], and \$0.44 per contract for Market Makers that achieve Priority Customer Complex Tier 10.

4. No Priority Customer complex order rebates will be paid for orders in NDX, NQX or MNX.

5. For all executions in complex NQX orders, the NQX index options fees in Section 5 will apply.

6. Firm Proprietary contracts traded are subject to the Crossing Fee Cap, as provided in Section 6.H.



7. The rebate for the highest tier volume achieved is applied retroactively to all eligible Priority Customer Complex volume once the threshold has been reached.
8. A \$0.05 per contract surcharge will be assessed to non-Priority Customer Complex Orders that take liquidity from the Complex Order Book, excluding Complex Orders executed in the Facilitation Mechanism, Solicited Order Mechanism, Price Improvement Mechanism and "exposure" auctions pursuant to Options 3, Section 14(c)(3).
9. Other than for Priority Customer orders, this fee is \$0.05 per contract for orders executed by Members that execute an ADV of 7,500 or more contracts in the PIM in a given month. Members that execute an ADV of 12,500 or more contracts in the PIM will not be charged a fee. The discounted fees are applied retroactively to all eligible PIM volume in that month once the threshold has been reached.
10. Fee charged for all legs.
11. Fees apply to the originating and contra order.
12. The Exchange will charge a stock handling fee of \$0.0010 per share (capped at \$50 per trade) for the stock leg of stock-option orders executed against other stock-option orders in the complex order book.
13. Members will not receive rebates for net zero complex orders. For purposes of determining which complex orders qualify as "net zero" the Exchange will count all complex orders that leg in to the regular order book and are executed at a net price per contract that is within a range of \$0.01 credit and \$0.01 debit.
14. Transaction fees applicable to Professional Customers for an order submitted as a Qualified Contingent Cross order and orders executed in the Exchange's Solicited Order Mechanism will be \$0.10 per contract.
15. During an "exposure" auction pursuant to Options 3, Section 14(c)(3), the originating side of the auction order will be assessed the applicable maker fee or rebate, and the contra side will be assessed the applicable taker fee or rebate.
16. Priority Customer Complex Tiers are based on Total Affiliated Member Complex Order Volume (Excluding Crossing Orders and Responses to Crossing Orders) Calculated as a Percentage of Customer Total Consolidated Volume. All Complex Order volume executed on the Exchange, including volume executed by Affiliated Members, is included in the volume calculation, except for volume executed as Crossing Orders and Responses to Crossing Orders. Affiliated Entities may aggregate their Complex Order volume for purposes of calculating Priority Customer Rebates. The Appointed OFP would receive the rebate associated with the qualifying volume tier based on aggregated volume.
- [17. Reserved.]

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**Section 9. Legal & Regulatory**

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**C. Options Regulatory Fee**

The ORF is [\$0.0016 per contract side until July 31, 2018.]

\$0.0020 per contract side[ as of August 1, 2018]

The Options Regulatory Fee ("ORF") is assessed by ISE to each ISE Member for options transactions cleared by The Options Clearing Corporation ("OCC") in the customer range where: (1) the execution occurs on ISE or (2) the execution occurs on another exchange and is cleared by an ISE Member. The ORF is collected by OCC on behalf of ISE from (1) ISE clearing members for all customer transactions they clear or (2) non-members for all customer transactions they clear that were executed on ISE. ISE uses reports from OCC when assessing and collecting ORF. The Exchange will notify Members via an Options Trader Alert of any change in the amount of the fee at least 30 calendar days prior to the effective date of the change.

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