

Required fields are shown with yellow backgrounds and asterisks.

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"/>
			Rule		
Pilot <input type="checkbox"/>	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 \*).

**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 \*       Last Name \*   
 Title \*   
 E-mail \*   
 Telephone \*       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         
 By      

(Name \*)

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 \***

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**

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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 the Exchange’s Pricing Schedule at Options 7, Section 3 (Regular Order Fees and Rebates), 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 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:

Sun Kim  
Associate General Counsel  
Nasdaq, Inc.  
646-420-7816

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

<sup>2</sup> 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, Section 3 (Regular Order Fees and Rebates) to: (i) decrease the Priority Customer<sup>3</sup> taker fee in Select Symbols,<sup>4</sup> and (ii) increase the Non-Priority Customer<sup>5</sup> maker fee in Select Symbols.

The Exchange initially filed the proposed pricing changes on March 1, 2021 (SR-ISE-2021-02). On March 2, 2021, the Exchange withdrew that filing and submitted this filing.

Today, Priority Customers are charged a taker fee of \$0.41 per contract for regular orders in Select Symbols. The Exchange now proposes to decrease this fee to \$0.37 per contract for Priority Customers.

Today, all Non-Priority Customers are charged a maker fee of \$0.11 per contract for regular orders in Select Symbols. The Exchange now proposes to increase this fee to \$0.18 per contract for all Non-Priority Customers.<sup>6</sup>

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<sup>3</sup> 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).

<sup>4</sup> “Select Symbols” are options overlying all symbols listed on the Nasdaq ISE that are in the Penny Interval Program.

<sup>5</sup> “Non-Priority Customers” include Market Makers, Non-Nasdaq ISE Market Makers, Firm Proprietary / Broker Dealers, and Professional Customers.

<sup>6</sup> The Exchange notes that under this proposal, Market Makers that qualify for Market Maker Plus in Select Symbols will continue to receive the applicable Market Maker Plus rebates in Select Symbols set forth in note 5 of Options 7, Section 3, and will not pay the proposed \$0.18 per contract maker fee.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>8</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 Exchange's proposed changes to its Pricing Schedule are reasonable 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’ ....”<sup>9</sup>

The Commission and the courts have repeatedly expressed their preference for

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<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>9</sup> 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)).

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>10</sup>

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options 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. As such, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

The Exchange believes that the proposed decrease for the Priority Customer taker fee in Select Symbols is reasonable, equitable, and not unfairly discriminatory. As discussed above, this fee will decrease from \$0.41 to \$0.37 per contract for Priority Customers. The Exchange seeks to incentivize Priority Customer participation, in particular, Priority Customer activity to remove liquidity in Select Symbols, with the proposed change. As amended, Priority Customers will continue to be charged the

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<sup>10</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

lowest taker fee in Select Symbols.<sup>11</sup> The Exchange believes that it is equitable and not unfairly discriminatory to charge Priority Customers a lower taker fee than other market participants as the Exchange has historically offered lower execution fees to Priority Customers. 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 who may interact with this order flow.

The Exchange believes that the proposed increase for the Non-Priority Customer maker fees in Select Symbols is reasonable, equitable, and not unfairly discriminatory. As discussed above, this fee will increase from \$0.11 to \$0.18 per contract for all Non-Priority Customers. While the maker fee is increasing for Non-Priority Customers, the proposed increase is intended to offset the cost of decreasing the Priority Customer taker fee proposed above. Furthermore, the Exchange notes that the proposed maker fees remain lower than maker fees at another options exchange.<sup>12</sup>

The Exchange believes that the proposed maker fees in Select Symbols is equitable and not fairly discriminatory because they will be increased uniformly for all Non-Priority Customers. Priority Customers will continue to be assessed no maker fees in Select Symbols under this proposal. For the same reasons discussed above for the

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<sup>11</sup> Today, the Exchange charges all Non-Priority Customers (except Market Makers) a taker fee of \$0.46 per contract in Select Symbols. Market Makers are currently charged a taker fee of \$0.45 per contract in Select Symbols.

<sup>12</sup> See, e.g., Nasdaq PHLX (“Phlx”) Pricing Schedule at Options 7, Section 4, which assesses Lead Market Makers and Market Makers an electronic options transaction charge of \$0.22 per contract in Penny Symbols, and Professionals, Broker-Dealers, and Firms an electronic options transaction charge of \$0.48 per contract in Penny Symbols.

proposed Priority Customer taker fees, the Exchange believes that it is equitable and not unfairly discriminatory to continue offering a lower rate to Priority Customers compared to other market participants.

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 proposed Select Symbol taker fee will be decreased for Priority Customers, who will continue to be charged at a lower rate than all other market participants for removing liquidity on the Exchange. The proposed Select Symbol maker fee will be increased uniformly for all Non-Priority Customers, while Priority Customers will continue to be assessed no fee for adding liquidity on the Exchange. As discussed above, the Exchange has historically charged lower rates to Priority Customers compared to other market participants. The Exchange believes that this incentivizes increased Priority Customer order flow, which 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 who may interact with this order flow.

In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other options 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. For example, while the Exchange is increasing the maker fees for Non-Priority Customers in Select Symbols under this proposal, the Exchange does not believe this will cause an undue burden on inter-market competition as the proposed fees remain lower than similar fees charged by other options exchanges such as Phlx.

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,<sup>13</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>13</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-2021-03)

March \_\_, 2021

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Exchanges Pricing Schedule at Options 7, Section 3

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 March 2, 2021, 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, Section 3 (Regular Order Fees and Rebates), as described further below.

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

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it

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

<sup>2</sup> 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, Section 3 (Regular Order Fees and Rebates) to: (i) decrease the Priority Customer<sup>3</sup> taker fee in Select Symbols,<sup>4</sup> and (ii) increase the Non-Priority Customer<sup>5</sup> maker fee in Select Symbols.

The Exchange initially filed the proposed pricing changes on March 1, 2021 (SR-ISE-2021-02). On March 2, 2021, the Exchange withdrew that filing and submitted this filing.

Today, Priority Customers are charged a taker fee of \$0.41 per contract for regular orders in Select Symbols. The Exchange now proposes to decrease this fee to \$0.37 per contract for Priority Customers.

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<sup>3</sup> 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).

<sup>4</sup> "Select Symbols" are options overlying all symbols listed on the Nasdaq ISE that are in the Penny Interval Program.

<sup>5</sup> "Non-Priority Customers" include Market Makers, Non-Nasdaq ISE Market Makers, Firm Proprietary / Broker Dealers, and Professional Customers.

Today, all Non-Priority Customers are charged a maker fee of \$0.11 per contract for regular orders in Select Symbols. The Exchange now proposes to increase this fee to \$0.18 per contract for all Non-Priority Customers.<sup>6</sup>

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>8</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 Exchange's proposed changes to its Pricing Schedule are reasonable 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

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<sup>6</sup> The Exchange notes that under this proposal, Market Makers that qualify for Market Maker Plus in Select Symbols will continue to receive the applicable Market Maker Plus rebates in Select Symbols set forth in note 5 of Options 7, Section 3, and will not pay the proposed \$0.18 per contract maker fee.

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(4) and (5).

exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers' ...."<sup>9</sup>

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>10</sup>

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options 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. As such, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

The Exchange believes that the proposed decrease for the Priority Customer taker fee in Select Symbols is reasonable, equitable, and not unfairly discriminatory. As discussed above, this fee will decrease from \$0.41 to \$0.37 per contract for Priority

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<sup>9</sup> 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)).

<sup>10</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) ("Regulation NMS Adopting Release").

Customers. The Exchange seeks to incentivize Priority Customer participation, in particular, Priority Customer activity to remove liquidity in Select Symbols, with the proposed change. As amended, Priority Customers will continue to be charged the lowest taker fee in Select Symbols.<sup>11</sup> The Exchange believes that it is equitable and not unfairly discriminatory to charge Priority Customers a lower taker fee than other market participants as the Exchange has historically offered lower execution fees to Priority Customers. 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 who may interact with this order flow.

The Exchange believes that the proposed increase for the Non-Priority Customer maker fees in Select Symbols is reasonable, equitable, and not unfairly discriminatory. As discussed above, this fee will increase from \$0.11 to \$0.18 per contract for all Non-Priority Customers. While the maker fee is increasing for Non-Priority Customers, the proposed increase is intended to offset the cost of decreasing the Priority Customer taker fee proposed above. Furthermore, the Exchange notes that the proposed maker fees remain lower than maker fees at another options exchange.<sup>12</sup>

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<sup>11</sup> Today, the Exchange charges all Non-Priority Customers (except Market Makers) a taker fee of \$0.46 per contract in Select Symbols. Market Makers are currently charged a taker fee of \$0.45 per contract in Select Symbols.

<sup>12</sup> See, e.g., Nasdaq PHLX (“Phlx”) Pricing Schedule at Options 7, Section 4, which assesses Lead Market Makers and Market Makers an electronic options transaction charge of \$0.22 per contract in Penny Symbols, and Professionals, Broker-Dealers, and Firms an electronic options transaction charge of \$0.48 per contract in Penny Symbols.

The Exchange believes that the proposed maker fees in Select Symbols is equitable and not fairly discriminatory because they will be increased uniformly for all Non-Priority Customers. Priority Customers will continue to be assessed no maker fees in Select Symbols under this proposal. For the same reasons discussed above for the proposed Priority Customer taker fees, the Exchange believes that it is equitable and not unfairly discriminatory to continue offering a lower rate to Priority Customers compared to other market participants.

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 proposed Select Symbol taker fee will be decreased for Priority Customers, who will continue to be charged at a lower rate than all other market participants for removing liquidity on the Exchange. The proposed Select Symbol maker fee will be increased uniformly for all Non-Priority Customers, while Priority Customers will continue to be assessed no fee for adding liquidity on the Exchange. As discussed above, the Exchange has historically charged lower rates to Priority Customers compared to other market participants. The Exchange believes that this incentivizes increased Priority Customer order flow, which 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 who may interact with this order flow.



In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other options 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. For example, while the Exchange is increasing the maker fees for Non-Priority Customers in Select Symbols under this proposal, the Exchange does not believe this will cause an undue burden on inter-market competition as the proposed fees remain lower than similar fees charged by other options exchanges such as Phlx.

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>13</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

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<sup>13</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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](mailto:rule-comments@sec.gov). Please include File Number SR-ISE-2021-03 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-2021-03. 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-2021-03 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>14</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>14</sup> 17 CFR 200.30-3(a)(12).

**EXHIBIT 5**

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

**Nasdaq ISE, LLC Rules**

\* \* \* \* \*

**Options 7 Pricing Schedule**

\* \* \* \* \*

**Section 3. Regular Order Fees and Rebates**

**Select Symbols**

<b>Market Participant</b>	<b>Maker Rebate / Fee<sup>(17)</sup></b>	<b>Taker Fee<sup>(17)</sup></b>	<b>Fee for Crossing Orders Except PIM Orders<sup>(1)</sup> (2)</b>	<b>Fee for PIM Orders<sup>(1)</sup> (2) (13)</b>	<b>Fee for Responses to Crossing Orders Except PIM Orders</b>	<b>Fee for Responses to PIM Orders</b>	<b>Facilitation and Solicitation Break-up Rebate<sup>(4)</sup></b>
Market Maker <sup>(8)</sup>	\$0.18[1] <sup>(5)</sup> (10) (11)	\$0.45	\$0.20	\$0.10	\$0.50	\$0.50	N/A
Non-Nasdaq ISE Market Maker (FarMM)	\$0.18[1] <sup>(1)</sup>	\$0.46	\$0.20	\$0.10	\$0.50	\$0.50	(\$0.15)
Firm Proprietary / Broker-Dealer	\$0.18[1] <sup>(1)</sup>	\$0.46	\$0.20	\$0.10	\$0.50	\$0.50	(\$0.15)
Professional Customer	\$0.18[1] <sup>(1)</sup>	\$0.46	\$0.20 <sup>(16)</sup>	\$0.10	\$0.50	\$0.50	(\$0.15)
Priority Customer	\$0.00	\$0.37[41]	\$0.00	\$0.00	\$0.50	\$0.50	(\$0.15)

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