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Page 1 of * 22

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

File No. * SR 2024 - * 29

Amendment No. (req. for Amendments *)

Filing by Nasdaq ISE, LLC

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

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|--|---|--|--|--|---|
| 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"/> |
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| Pilot <input type="checkbox"/> | Extension of Time Period for Commission Action * <input type="checkbox"/> | Date Expires * <input type="text"/> |
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Rule

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| <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
Section 806(e)(1) *

Section 806(e)(2) *

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 3C(b)(2) *

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

Description

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

A proposal to amend the fees for Nasdaq 100 Index options in the Exchange Pricing Schedule at Options 7.

Contact Information

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

First Name * Sun Last Name * Kim

Title * Associate General Counsel

E-mail * sun.kim@nasdaq.com

Telephone * (646) 420-7816 Fax

Signature

Pursuant to the requirements of the Securities Exchange of 1934, Nasdaq ISE, LLC has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date 07/12/2024

(Title *)

By John Zecca
(Name *)

EVP and Chief Legal Counsel

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

 Date: 2024.07.12 12:13:32 -04'00'

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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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SR-ISE-2024-29 19b-4.docx

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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SR-ISE-2024-29 Exhibit 1.docx

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 Advanced 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 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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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 Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

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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 Sent As Paper Document

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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SR-ISE-2024-29 Exhibit 5.docx

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”)¹ and Rule 19b-4 thereunder,² is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to amend the fees for Nasdaq 100 Index options in the Exchange’s Pricing Schedule at Options 7, Section 5.A.

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”). 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

a. Purpose

The purpose of the proposed rule change is to amend the fees for NDX³ in Options 7, Section 5.A. The Exchange initially filed the proposed pricing changes on July 1, 2024 (SR-ISE-2024-26). On July 12, 2024, the Exchange withdrew that filing and submitted this filing.

Today, the Exchange assesses transaction fees of \$0.75 per contract for all Non-Priority Customer⁴ regular NDX orders, and \$0.25 per contract for all Priority Customer⁵ regular NDX orders. In accordance with note 1 of Options 7, Section 5.A, the applicable complex order fees for Non-Select Symbols⁶ in Options 7, Section 4 apply to all executions in complex NDX orders for Non-Priority Customers.⁷ Note 1 further provides that for all executions in complex NDX orders for Priority Customers, the fee will be \$0.25 per contract.

The Exchange now proposes to assess a surcharge of \$0.25 per contract to all market participants for simple and complex executions in NDX with a premium price of

³ For purposes of the Pricing Schedule, “NDX” means A.M. or P.M. settled options on the full value of the Nasdaq 100® Index. See Options 7, Section 1(c).

⁴ “Non-Priority Customers” include Market Makers, Non-Nasdaq ISE Market Makers (FarMMs), Firm Proprietary / Broker-Dealers, and Professional Customers.

⁵ A “Priority Customer” is a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s), as defined in Nasdaq ISE Options 1, Section 1(a)(37).

⁶ “Non-Select Symbols” are options overlying all symbols excluding Select Symbols. “Select Symbols” are options overlying all symbols listed on the Nasdaq ISE that are in the Penny Interval Program.

⁷ See generally Options 7, Section 4 (setting forth Non-Priority Customer maker/taker fees for Non-Select Symbols, including NDX).

\$25.00 or greater.⁸ The fees for simple and complex executions in NDX with a premium price of less than \$25.00 will remain unchanged under this proposal. The Exchange notes that charging different fees based on the option premium is consistent with how other options are priced at another options exchange.⁹ The Exchange further notes that the proposed surcharge amount is within the range of surcharges assessed for transactions in other products at other options exchanges.¹⁰

The Exchange notes that less than 50% of total NDX executed volume is in NDX contracts with a premium of \$25.00 or greater, as shown in the chart below.¹¹

⁸ See proposed note 3 in Options 7, Section 5.A.

⁹ For example, Cboe Options (“Cboe”) currently assesses customers a \$0.36 per contract fee (if premium < \$1.00) or \$0.45 per contract fee (if premium >= \$1.00) for SPX and SPESG options. Cboe also currently assesses market-makers a \$0.05 per contract fee (if premium is \$0.00-\$0.10) or \$0.23 per contract (if premium >= \$0.11) for VIX options. See Cboe Fees Schedule.

¹⁰ For example, Cboe currently assesses customers a \$0.25 per contract exotic surcharge and a \$0.21 per contract execution surcharge in SPX and SPESG options. See Cboe Fees Schedule. In addition, the Exchange’s affiliate, Nasdaq Phlx LLC (“Phlx”) current assesses a \$0.25 per contract complex surcharge for executions in singly-listed U.S. dollar-settled foreign currency options. See Phlx Options 7, Section 5.D.

¹¹ The chart includes A.M. and P.M. settled options on the full value of the Nasdaq 100® Index on Nasdaq ISE, LLC, Nasdaq GEMX, LLC, and Nasdaq Phlx LLC.

NDX Volume by Premium Over Time

Data through July 11, 2024



Notably, the majority of NDX contracts have a premium price of below \$25.00. The Exchange believes that on the whole, while it is proposing a \$0.25 per contract surcharge on NDX executions with a premium price of \$25.00 or greater, market participants will continue to be incentivized to transact in NDX, especially given that the majority of such transactions would occur below the threshold at which the proposed surcharge would be assessed.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹² in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹³

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(4) and (5).

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 believes that its proposal to add a \$0.25 per contract surcharge to all market participants for simple and complex executions in NDX with a premium price of \$25.00 or greater is reasonable because the proposed pricing reflects the proprietary nature of this product. Similar to other proprietary products like options overlying the Nasdaq 100 Micro Index (“XND”), the Exchange seeks to recoup the operational costs of listing proprietary products.¹⁴ Also, pricing by symbol is a common practice on many U.S. options exchanges as a means to incentivize order flow to be sent to an exchange for execution in particular products. Other options exchanges price by symbol and based on the option premium.¹⁵ Further, the Exchange notes that market participants are offered different ways to gain exposure to the Nasdaq 100 Index, whether through the Exchange’s proprietary products like options overlying NDX or XND, or separately through multi-listed options overlying Invesco QQQ Trust (“QQQ”).¹⁶ Offering such products provides market participants with a variety of choices in selecting the product they desire to utilize in order to gain exposure to the Nasdaq 100 Index. When exchanges are able to recoup costs associated with offering proprietary products, it incentivizes growth and competition for the innovation of additional products. The Exchange further

¹⁴ By way of example, in analyzing an obvious error, the Exchange would have additional data points available in establishing a theoretical price for a multiply listed option as compared to a proprietary product, which requires additional analysis and administrative time to comply with Exchange rules to resolve an obvious error.

¹⁵ See supra note 9.

¹⁶ QQQ is an exchange-traded fund based on the same Nasdaq 100 Index as NDX and XND.

believes that the proposed surcharge described above is reasonable because the new fee is in line with surcharges assessed on other index products at other options exchanges.¹⁷

The Exchange believes that its proposal is equitable and not unfairly discriminatory because it will be applied uniformly to all market participants. Assessing a surcharge only for executions in NDX whose premium is \$25.00 or greater is equitable and not unfairly discriminatory for the reasons that follow. As shown in the chart above, the majority of NDX contracts have a premium of less than \$25.00, and the Exchange is limiting the proposed surcharge to higher-priced NDX contracts (i.e., \$25.00 or greater), while maintaining lower costs on lower-priced NDX contracts (i.e., below \$25.00). As such, the Exchange believes that its proposal will continue to promote liquidity in these products, to the benefit of all market participants because the majority of NDX contracts would not incur the proposed \$0.25 surcharge as they would fall below the premium price threshold at which the surcharge would be assessed.

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 will apply the proposed surcharge uniformly to all market participants. As discussed above, the majority of NDX contracts have a premium of less than \$25.00 and these contracts would not incur the proposed \$0.25 surcharge as they would fall under the premium price threshold at which the surcharge would be assessed. By limiting the proposed surcharge to higher-priced

¹⁷ See supra note 10.

NDX contracts (i.e., with a premium price of \$25.00 or higher), the Exchange believes that its proposal will continue to promote liquidity in NDX by maintaining lower costs for lower-priced NDX contracts. Greater liquidity benefits all market participants by providing more trading opportunities, tighter spreads, and added market transparency and price discovery.

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. As noted above, market participants are offered an opportunity to transact in NDX or XND, or separately execute options overlying QQQ. Offering these products provides market participants with a variety of choices in selecting the product they desire to use to gain exposure to the Nasdaq 100 Index. Furthermore, the proposed surcharge is in line with surcharges assessed on other products at another options exchange.¹⁸

In addition to the Exchange, market participants have alternative options exchanges that they may participate on and direct their order flow, which list proprietary

¹⁸ See supra note 10.

products that compete with NDX.¹⁹ In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing options exchanges to maintain their competitive standing in the financial markets.

5. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

6. Extension of Time Period for Commission Action

Not applicable.

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

Pursuant to Section 19(b)(3)(A)(ii) of the Act,²⁰ 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

¹⁹ See e.g., pricing for Russell 2000 Index (“RUT”) on Cboe’s Fees Schedule and Cboe C2 Exchange, Inc.’s (“C2”) Fees Schedule. See also SPX pricing on Cboe’s Fees Schedule. Both RUT and SPX are proprietary products on the Cboe markets that are broad-based index options, like NDX and NDXP.

²⁰ 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-2024-29)

July __, 2024

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Fees for Nasdaq 100 Index Options in Options 7, Section 5.A

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹, and Rule 19b-4 thereunder,² notice is hereby given that on July 12, 2024, 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 fees for Nasdaq 100 Index options in the Exchange’s Pricing Schedule at Options 7, Section 5.A.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The purpose of the proposed rule change is to amend the fees for NDX³ in Options 7, Section 5.A. The Exchange initially filed the proposed pricing changes on July 1, 2024 (SR-ISE-2024-26). On July 12, 2024, the Exchange withdrew that filing and submitted this filing.

Today, the Exchange assesses transaction fees of \$0.75 per contract for all Non-Priority Customer⁴ regular NDX orders, and \$0.25 per contract for all Priority Customer⁵ regular NDX orders. In accordance with note 1 of Options 7, Section 5.A, the applicable complex order fees for Non-Select Symbols⁶ in Options 7, Section 4 apply to all executions in complex NDX orders for Non-Priority Customers.⁷ Note 1 further provides that for all executions in complex NDX orders for Priority Customers, the fee will be \$0.25 per contract.

³ For purposes of the Pricing Schedule, "NDX" means A.M. or P.M. settled options on the full value of the Nasdaq 100® Index. See Options 7, Section 1(c).

⁴ "Non-Priority Customers" include Market Makers, Non-Nasdaq ISE Market Makers (FarMMs), Firm Proprietary / Broker-Dealers, and Professional Customers.

⁵ A "Priority Customer" is a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s), as defined in Nasdaq ISE Options 1, Section 1(a)(37).

⁶ "Non-Select Symbols" are options overlying all symbols excluding Select Symbols. "Select Symbols" are options overlying all symbols listed on the Nasdaq ISE that are in the Penny Interval Program.

⁷ See generally Options 7, Section 4 (setting forth Non-Priority Customer maker/taker fees for Non-Select Symbols, including NDX).

The Exchange now proposes to assess a surcharge of \$0.25 per contract to all market participants for simple and complex executions in NDX with a premium price of \$25.00 or greater.⁸ The fees for simple and complex executions in NDX with a premium price of less than \$25.00 will remain unchanged under this proposal. The Exchange notes that charging different fees based on the option premium is consistent with how other options are priced at another options exchange.⁹ The Exchange further notes that the proposed surcharge amount is within the range of surcharges assessed for transactions in other products at other options exchanges.¹⁰

The Exchange notes that less than 50% of total NDX executed volume is in NDX contracts with a premium of \$25.00 or greater, as shown in the chart below.¹¹

⁸ See proposed note 3 in Options 7, Section 5.A.

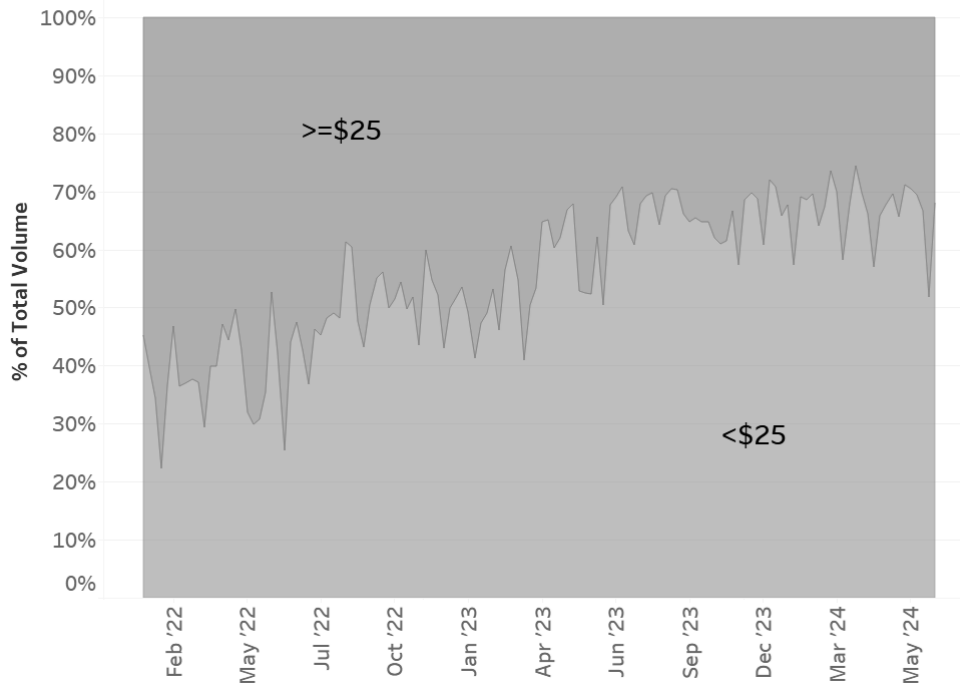
⁹ For example, Cboe Options (“Cboe”) currently assesses customers a \$0.36 per contract fee (if premium < \$1.00) or \$0.45 per contract fee (if premium >= \$1.00) for SPX and SPESG options. Cboe also currently assesses market-makers a \$0.05 per contract fee (if premium is \$0.00-\$0.10) or \$0.23 per contract (if premium >= \$0.11) for VIX options. See Cboe Fees Schedule.

¹⁰ For example, Cboe currently assesses customers a \$0.25 per contract exotic surcharge and a \$0.21 per contract execution surcharge in SPX and SPESG options. See Cboe Fees Schedule. In addition, the Exchange’s affiliate, Nasdaq Phlx LLC (“Phlx”) current assesses a \$0.25 per contract complex surcharge for executions in singly-listed U.S. dollar-settled foreign currency options. See Phlx Options 7, Section 5.D.

¹¹ The chart includes A.M. and P.M. settled options on the full value of the Nasdaq 100® Index on Nasdaq ISE, LLC, Nasdaq GEMX, LLC, and Nasdaq Phlx LLC.

NDX Volume by Premium Over Time

Data through July 11, 2024



Notably, the majority of NDX contracts have a premium price of below \$25.00. The Exchange believes that on the whole, while it is proposing a \$0.25 per contract surcharge on NDX executions with a premium price of \$25.00 or greater, market participants will continue to be incentivized to transact in NDX, especially given that the majority of such transactions would occur below the threshold at which the proposed surcharge would be assessed.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹² in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹³

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(4) and (5).

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 believes that its proposal to add a \$0.25 per contract surcharge to all market participants for simple and complex executions in NDX with a premium price of \$25.00 or greater is reasonable because the proposed pricing reflects the proprietary nature of this product. Similar to other proprietary products like options overlying the Nasdaq 100 Micro Index (“XND”), the Exchange seeks to recoup the operational costs of listing proprietary products.¹⁴ Also, pricing by symbol is a common practice on many U.S. options exchanges as a means to incentivize order flow to be sent to an exchange for execution in particular products. Other options exchanges price by symbol and based on the option premium.¹⁵ Further, the Exchange notes that market participants are offered different ways to gain exposure to the Nasdaq 100 Index, whether through the Exchange’s proprietary products like options overlying NDX or XND, or separately through multi-listed options overlying Invesco QQQ Trust (“QQQ”).¹⁶ Offering such products provides market participants with a variety of choices in selecting the product they desire to utilize in order to gain exposure to the Nasdaq 100 Index. When exchanges are able to recoup costs associated with offering proprietary products, it incentivizes growth and competition for the innovation of additional products. The Exchange further

¹⁴ By way of example, in analyzing an obvious error, the Exchange would have additional data points available in establishing a theoretical price for a multiply listed option as compared to a proprietary product, which requires additional analysis and administrative time to comply with Exchange rules to resolve an obvious error.

¹⁵ See supra note 9.

¹⁶ QQQ is an exchange-traded fund based on the same Nasdaq 100 Index as NDX and XND.

believes that the proposed surcharge described above is reasonable because the new fee is in line with surcharges assessed on other index products at other options exchanges.¹⁷

The Exchange believes that its proposal is equitable and not unfairly discriminatory because it will be applied uniformly to all market participants. Assessing a surcharge only for executions in NDX whose premium is \$25.00 or greater is equitable and not unfairly discriminatory for the reasons that follow. As shown in the chart above, the majority of NDX contracts have a premium of less than \$25.00, and the Exchange is limiting the proposed surcharge to higher-priced NDX contracts (i.e., \$25.00 or greater), while maintaining lower costs on lower-priced NDX contracts (i.e., below \$25.00). As such, the Exchange believes that its proposal will continue to promote liquidity in these products, to the benefit of all market participants because the majority of NDX contracts would not incur the proposed \$0.25 surcharge as they would fall below the premium price threshold at which the surcharge would be assessed.

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 will apply the proposed surcharge uniformly to all market participants. As discussed above, the majority of NDX contracts have a premium of less than \$25.00 and these contracts would not incur the proposed \$0.25 surcharge as they would fall under the premium price threshold at which the surcharge would be assessed. By limiting the proposed surcharge to higher-priced

¹⁷ See supra note 10.

NDX contracts (i.e., with a premium price of \$25.00 or higher), the Exchange believes that its proposal will continue to promote liquidity in NDX by maintaining lower costs for lower-priced NDX contracts. Greater liquidity benefits all market participants by providing more trading opportunities, tighter spreads, and added market transparency and price discovery.

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. As noted above, market participants are offered an opportunity to transact in NDX or XND, or separately execute options overlying QQQ. Offering these products provides market participants with a variety of choices in selecting the product they desire to use to gain exposure to the Nasdaq 100 Index. Furthermore, the proposed surcharge is in line with surcharges assessed on other products at another options exchange.¹⁸

In addition to the Exchange, market participants have alternative options exchanges that they may participate on and direct their order flow, which list proprietary

¹⁸ See supra note 10.

products that compete with NDX.¹⁹ In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing options exchanges to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.²⁰ At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

¹⁹ See e.g., pricing for Russell 2000 Index (“RUT”) on Cboe’s Fees Schedule and Cboe C2 Exchange, Inc.’s (“C2”) Fees Schedule. See also SPX pricing on Cboe’s Fees Schedule. Both RUT and SPX are proprietary products on the Cboe markets that are broad-based index options, like NDX and NDXP.

²⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

Electronic Comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-ISE-2024-29 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-2024-29. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or

subject to copyright protection. All submissions should refer to file number SR-ISE-2024-29 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

Sherry R. Haywood,

Assistant Secretary.

²¹ 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

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Section 5. Index Options Fees and Rebates

A. NDX Index Options Fees for Regular Orders⁽¹⁾⁽³⁾

| Market Participant | Fee |
|---|-----------------------|
| Market Maker | \$0.75 |
| Market Maker (for orders sent by Electronic Access Members) | \$0.75 |
| Non-Nasdaq ISE Market Maker (FarMM) | \$0.75 |
| Firm Proprietary / Broker-Dealer | \$0.75 |
| Professional Customer | \$0.75 |
| Priority Customer | \$0.25 ⁽²⁾ |

* * * * *

³. A surcharge of \$0.25 per contract will be assessed to all market participants for simple and complex executions in NDX with a premium price of \$25.00 or greater.

* * * * *