Required fields are shown with yellow backgrounds and asterisks.

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

File No. * SR 2025 - * 10
Amendment No. (req. for Amendments *)

Filing by Nasdaq ISE, LLC

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

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

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

Rule

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

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 establish fees for the Exchange's flexible exchange options functionality (FLEX Options).

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 * Olumuyiwa

Last Name * Odeniyide

Title * Director and Associate General Counsel

E-mail * Olumuyiwa.Odeniyide@Nasdaq.com

Telephone * (202) 817-7995

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 03/12/2025

By John A. Zecca
(Name *)

(Title *)
EVP and Chief Legal Officer

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.

John A. Zecca Date: 2025.03.12 15:12:18 -04'00'

Required fields are shown with yellow backgrounds and astericks.

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 SR-ISE-2025-10 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 * Add Remove View SR-ISE-2025-10 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 * 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 2- Notices, Written Comments, Transcripts, Other Communications Add Remove View	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 Add Remove View	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 Add Remove View	The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.
Exhibit 5 - Proposed Rule Text Add Remove View SR-ISE-2025-10 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 Add Remove View	If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) Nasdaq ISE, LLC ("ISE" or "Exchange"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] is filing with the Securities and Exchange Commission ("SEC" or "Commission") a proposal to establish fees for its flexible exchange options functionality ("FLEX Options"), as described further below.

While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on April 7, 2025.

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:

Olumuyiwa Odeniyide
Associate General Counsel
Nasdaq, Inc.
202-817-7995

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

[2] 17 CFR 240.19b-4.

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

a. Purpose

The Exchange previously received approval for FLEX Options functionality.[3] As described in that filing, FLEX Options are customized options contracts that will allow investors to tailor contract terms for exchange-listed equity and index options.[4] The Exchange intends to implement the FLEX Options on April 7, 2025.[5] The purpose of this proposed rule change is to establish the fees for FLEX Options.

Background

As noted in the FLEX Approval Order, FLEX Options will be designed to meet the needs of market participants for greater flexibility in selecting the terms of options within the parameters of the Exchange's rules.[6] FLEX Options will not be preestablished for trading and will not be listed individually for trading on the Exchange. Rather, market participants will select FLEX Option terms and will be limited by the parameters detailed in Options 3A, Section 3(c) in their selection of those terms. As a result, FLEX Options would allow investors to specify more specific, individualized investment objectives than may be available to them in the standardized options market.

As stated in the FLEX Approval Order, orders in FLEX Options may be submitted through an electronic FLEX Auction, FLEX Price Improvement Auction

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3 See Securities Exchange Act Release No. 101720 (November 22, 2024), 89 FR 94986 (November 29, 2024) (SR-ISE-2024-12) ("FLEX Approval Order"). The FLEX Approval Order is approved, but not yet implemented. As stated in that rule change, the Exchange plans to implement the changes in the FLEX Approval Order by May 12, 2025.

4 Id.

5 Options Technical Update #2025 - 2, Nasdaq ISE Introduces Electronic FLEX Options on April 7, 2025 (Feb. 12, 2025), https://www.nasdaqtrader.com/MicroNews.aspx?id=OTU2025-2.

6 See supra note 3.

("FLEX PIM"), or a FLEX Solicited Order Mechanism ("FLEX SOM").[7] An electronic FLEX Auction is a one-sided mechanism through which an Exchange member may electronically submit for execution an order (which may be a simple or complex order) pursuant to the eligibility requirements in Options 3A, Section 11(b)(1).

The FLEX PIM is a paired auction mechanism pursuant to Options 3A, Section 12 through which an Exchange member may electronically submit for execution an order (which may be a simple or complex order) it represents as agent ("Agency Order") against principal interest or a solicited order(s) (except, if the Agency Order is a simple order, for an order for the account of any FLEX Market Maker with an appointment in the applicable FLEX Option class on the Exchange) (an "Initiating Order"), provided it submits the Agency Order for electronic execution into a FLEX PIM Auction pursuant to Options 3A, Section 12.

The FLEX SOM is a paired auction mechanism pursuant to Options 3A, Section 13 through which an Exchange member (the "Initiating Member") may electronically submit for execution an order (which may be a simple or complex order) it represents as agent ("Agency Order") against a solicited order ("Solicited Order") if it submits the Agency Order for electronic execution into a FLEX SOM Auction pursuant to Options 3A, Section 13.

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7 Id.

Proposed Fees

The Exchange proposes to establish the following fee schedule in Options 7, Section 6.D, which is currently reserved:

Market Participant	Fee for FLEX Auctions	Fee for FLEX PIM and SOM	Fee for Responses to FLEX PIM and SOM Orders
Market Maker	$0.10	$0.07	$0.50
Non-Nasdaq ISE Market Maker (FarMM)	$0.10	$0.07	$0.50
Firm Proprietary / Broker-Dealer	$0.10	$0.07	$0.50
Professional Customer	$0.10	$0.07	$0.50
Priority Customer	$0.00	$0.00	$0.50

The Exchange also proposes that for all executions in FLEX NDX and FLEX XND orders, the applicable index options fees in Options 7, Section 5 will apply.[8] As such, for FLEX NDX orders, the Exchange will assess all Non-Priority Customers[9] a uniform $0.75 per contract fee for regular NDX orders and Priority Customers[10] a uniform $0.25 per contract fee for regular NDX orders. In accordance with note 1 of Options 7, Section 5.A, the applicable complex order fees for Non-Select Symbols[11] in

8 "NDX" means A.M. or P.M. settled options on the full value of the Nasdaq 100® Index. See Options 7, Section 1(c)(Definitions). "XND" are options on the Nasdaq 100 Micro Index. See Supplementary Material .04 to Options 3, Section 3.

9 "Non-Priority Customers" include Market Makers, Non-Nasdaq ISE Market Makers (FarMMs), Firm Proprietary / Broker-Dealers, and Professional Customers. See Options 7, Section 1(c).

10 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). See Options 7, Section 1(c).

11 "Non-Select Symbols" are options overlying all symbols excluding Select Symbols. See Options 7, Section 1(c). "Select Symbols" are options overlying all symbols listed on the Nasdaq ISE that are in the Penny Interval Program. Id.

Options 7, Section 4 would apply to all executions in complex FLEX NDX orders for Non-Priority Customers.[12] Further in accordance with Note 1, all executions in complex FLEX NDX orders for Priority Customers would be assessed a fee of $0.25 per contract. In accordance with Note 2 of Options 7, Section 5.A, a surcharge of $0.25 per contract would be assessed to all Priority Customer complex executions in FLEX NDX. Lastly, in accordance with Note 3 of Options 7, Section 5.A, a surcharge of $0.25 per contract will be assessed to all market participants for simple and complex executions in FLEX NDX with a premium price of $25.00 or greater.

For FLEX XND orders, the Exchange would assess the same pricing as non-FLEX XND orders as set forth in Options 7, Section 5.C. As such, the Exchange would assess all Non-Priority Customers a $0.10 per contract for FLEX XND orders, and assess all Priority Customers no fees for FLEX XND orders.

Lastly, the Exchange would assess FLEX NDX and FLEX XND orders the Non-Priority Customer license surcharge for index options in Options 7, Section 5.D. Specifically, Non-Priority Customer FLEX NDX orders would be assessed a $0.25 per contract license surcharge and Non-Priority Customer FLEX XND orders would be assessed a $0.10 per contract license surcharge.

Flex Auction Fees

An Exchange member may electronically submit a FLEX order into an electronic FLEX Auction pursuant to Options 3A, Section 11(b). For the FLEX Auction, the

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

Exchange proposes assessing $0.10 per contract for Market Makers,[13] Non-Nasdaq ISE Market Makers (FarMM),[14] Firm Proprietary[15] / Broker Dealers,[16] and Professional Customers.[17] The Exchange proposes assessing no fees for Priority Customers.

FLEX PIM and SOM Fees

An Exchange member may electronically submit a FLEX order into a FLEX PIM and FLEX SOM pursuant to Options 3A, Section 12 and Options 3A, Section 13, respectively. For the FLEX PIM and FLEX SOM, the Exchange proposes assessing $0.07 per contract for Market Makers, Non-Nasdaq ISE Market Makers (FarMM), Firm Proprietary / Broker Dealers, and Professional Customers. The Exchange proposes assessing no fees for Priority Customers. The fees will apply to the originating and contra order.

Fees for FLEX PIM and SOM Responses

Any member other than an Initiating Member may submit responses to a FLEX PIM and FLEX SOM pursuant to Options 3A, Section 12(c)(5) and Options 3A, Section 13(c)(5), respectively. For responses to a FLEX PIM and FLEX SOM, the Exchange proposes assessing $0.50 per contract for Market Makers, Non-Nasdaq ISE Market

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

14 A "Non-Nasdaq ISE Market Maker" is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934, as amended, registered in the same options class on another options exchange. See Options 7, Section 1(c).

15 A "Firm Proprietary" order is an order submitted by a member for its own proprietary account. See Options 7, Section 1(c).

16 A "Broker-Dealer" order is an order submitted by a member for a broker-dealer account that is not its own proprietary account. See Options 7, Section 1(c).

17 A "Professional Customer" is a person or entity that is not a broker/dealer and is not a Priority Customer. See Options 7, Section 1(c).

Makers (FarMM), Firm Proprietary / Broker Dealers, Professional Customers, and Priority Customers.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[18] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[19] 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."[20]

Likewise, in NetCoalition v. Securities and Exchange Commission[21] ("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.[22] As the court emphasized, the Commission

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18 15 U.S.C. 78f(b).

19 15 U.S.C. 78f(b)(4) and (5).

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

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

22 See NetCoalition, at 534 - 535.

"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."[23]

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'…."[24]

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

Accordingly, the Exchange believes that the fees are reasonable because they are competitive with the fees of other exchanges including those of Cboe Exchange, Inc. ("Cboe").[25] The Exchange's fees for the FLEX Auction, FLEX PIM, and FLEX SOM

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23 Id. at 537.

24 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)).

25 See, e.g., Cboe Exchange Inc., Fees Schedule (Feb. 13, 2025), https://cdn.cboe.com/resources/membership/Cboe_FeeSchedule.pdf.

are comparable with those of Cboe's electronic FLEX Auction, Cboe's FLEX AIM, and Cboe's FLEX SAM.[26] For the FLEX Auction, the Exchange proposes assessing $0.10 per contract for Market Makers, Non-Nasdaq ISE Market Makers (FarMM), Firm Proprietary / Broker Dealers, and Professional Customers. The Exchange proposes assessing no fees for Priority Customers for the FLEX Auction. For the FLEX PIM and FLEX SOM, the Exchange proposes assessing $0.07 per contract for Market Makers, Non-Nasdaq ISE Market Makers (FarMM), Firm Proprietary / Broker Dealers, and Professional Customers. The Exchange proposes assessing no fees for Priority Customers for the FLEX PIM and FLEX SOM and the fees apply to the originating and contra order. For responses to the FLEX PIM and FLEX SOM, the Exchange proposes assessing $0.50 per contract for Market Makers, Non-Nasdaq ISE Market Makers (FarMM), Firm Proprietary / Broker Dealers, Professional Customers, and Priority Customers. These fees are reasonable because they are competitive with market dynamics and consider the price improvement opportunities of the order mechanisms. In particular, the Exchange believes that it is reasonable to assess a slightly lower fee of $0.07 per contract for Non-Priority Customers in FLEX PIM and FLEX SOM compared to the $0.10 per contract fee for Non-Priority Customers in electronic FLEX Auctions because the Exchange seeks to incentivize more activity in FLEX PIM and FLEX SOM for potential price improvement.

Further, the Exchange believes that the fees are an equitable allocation and are not unfairly discriminatory. The fees for the FLEX Auction, FLEX PIM and FLEX SOM, and the responses to the FLEX PIM and FLEX SOM will apply in a like manner to all

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26 Id.

similarly situated members except for Priority Customers, who will be assessed no fees in the FLEX Auction and FLEX PIM and FLEX SOM. The Exchange believes that it is equitable and not unfairly discriminatory to assess more favorable pricing for Priority Customers considering that Priority Customers are generally historically assessed the lowest fees compared to other market participants on ISE.[27] Priority Customer order flow enhances liquidity on the Exchange to 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.

As it relates to the FLEX NDX and FLEX XND pricing described above, the Exchange believes that its proposal is reasonable because it will assess the same fees for FLEX NDX and FLEX XND orders as it does today for non-FLEX NDX and non-FLEX XND orders. Similar to non-FLEX NDX and non-FLEX XND, the Exchange seeks to recoup the operational costs for listing proprietary products.[28] 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.[29] Further, the Exchange notes that with its products, market participants are offered an opportunity to either transact non-standard NDX or non-standard XND or separately execute PowerShares QQQ Trust ("QQQ") options.[30] Offering products such

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27 See, e.g., Options 7, Section 3 (setting forth Priority Customer maker/taker pricing for Select and Non-Select Symbols).

28 For 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.

29 See pricing for Russell 2000 Index ("RUT") on Chicago Board Options Exchange, Incorporated's ("CBOE") Fees Schedule and on CBOE C2 Exchange, Inc.'s ("C2") Fees Schedule.

30 QQQ is an exchange-traded fund based on the Nasdaq 100® Index.

as QQQ provides market participants with a variety of choices in selecting the product they desire to utilize to transact the Nasdaq 100® Index.[31] 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 believes that the proposed FLEX NDX and FLEX XND fees are equitable and not unfairly discriminatory because Non-Priority Customers will be assessed the same level of pricing across the board whereas Priority Customers will be assessed lower fees or no fees. The Exchange believes it is equitable and not unfairly discriminatory to assess lower fees for Priority Customers because Priority Customer order flow enhances liquidity on the Exchange to 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.

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. 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 opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges.

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[31] QQQ options overlie the same index as NDX, namely the Nasdaq 100® Index. This relationship between QQQ options and NDX options is similar to the relationship between RUT and the iShares Russell 2000 Index ("IWM"), which is the ETF on RUT.

Because competitors are free to modify their own fees in response, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. Further, the Exchange's fees do not impose an undue burden on competition because the Exchange will apply the same fees to all similarly situated members except for Priority Customers in the FLEX Auction and FLEX PIM and FLEX SOM considering that Priority Customers are historically assessed the lowest fees compared to other market participants. Priority Customer order flow enhances liquidity on the Exchange to 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. Nasdaq does not believe that the proposed fee changes place an unnecessary 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

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,[32] 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.

[32] 15 U.S.C. 78s(b)(3)(A)(ii).

While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on April 7, 2025.

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

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

Not applicable.

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

Not applicable.

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

Not applicable.

11. Exhibits

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

5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. ; File No. SR-ISE-2025-10)

March __, 2025

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish Fees for FLEX Options

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1], and Rule 19b-4 thereunder,[2] notice is hereby given that on March 12, 2025, 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 establish fees for its flexible exchange options functionality ("FLEX Options"), as described further below. While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on April 7, 2025.

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

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

2 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 previously received approval for FLEX Options functionality.[3] As described in that filing, FLEX Options are customized options contracts that will allow investors to tailor contract terms for exchange-listed equity and index options.[4] The Exchange intends to implement the FLEX Options on April 7, 2025.[5] The purpose of this proposed rule change is to establish the fees for FLEX Options.

Background

As noted in the FLEX Approval Order, FLEX Options will be designed to meet the needs of market participants for greater flexibility in selecting the terms of options within the parameters of the Exchange's rules.[6] FLEX Options will not be preestablished

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3 See Securities Exchange Act Release No. 101720 (November 22, 2024), 89 FR 94986 (November 29, 2024) (SR-ISE-2024-12) ("FLEX Approval Order"). The FLEX Approval Order is approved, but not yet implemented. As stated in that rule change, the Exchange plans to implement the changes in the FLEX Approval Order by May 12, 2025.

4 Id.

5 Options Technical Update #2025 - 2, Nasdaq ISE Introduces Electronic FLEX Options on April 7, 2025 (Feb. 12, 2025), https://www.nasdaqtrader.com/MicroNews.aspx?id=OTU2025-2.

6 See supra note 3.

for trading and will not be listed individually for trading on the Exchange. Rather, market participants will select FLEX Option terms and will be limited by the parameters detailed in Options 3A, Section 3(c) in their selection of those terms. As a result, FLEX Options would allow investors to specify more specific, individualized investment objectives than may be available to them in the standardized options market.

As stated in the FLEX Approval Order, orders in FLEX Options may be submitted through an electronic FLEX Auction, FLEX Price Improvement Auction ("FLEX PIM"), or a FLEX Solicited Order Mechanism ("FLEX SOM").[7] An electronic FLEX Auction is a one-sided mechanism through which an Exchange member may electronically submit for execution an order (which may be a simple or complex order) pursuant to the eligibility requirements in Options 3A, Section 11(b)(1).

The FLEX PIM is a paired auction mechanism pursuant to Options 3A, Section 12 through which an Exchange member may electronically submit for execution an order (which may be a simple or complex order) it represents as agent ("Agency Order") against principal interest or a solicited order(s) (except, if the Agency Order is a simple order, for an order for the account of any FLEX Market Maker with an appointment in the applicable FLEX Option class on the Exchange) (an "Initiating Order"), provided it submits the Agency Order for electronic execution into a FLEX PIM Auction pursuant to Options 3A, Section 12.

The FLEX SOM is a paired auction mechanism pursuant to Options 3A, Section 13 through which an Exchange member (the "Initiating Member") may electronically submit for execution an order (which may be a simple or complex order) it represents as

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7 Id.

agent ("Agency Order") against a solicited order ("Solicited Order") if it submits the Agency Order for electronic execution into a FLEX SOM Auction pursuant to Options 3A, Section 13.

Proposed Fees

The Exchange proposes to establish the following fee schedule in Options 7, Section 6.D, which is currently reserved:

Market Participant	**Fee for FLEX Auctions**	**Fee for FLEX PIM and SOM**	**Fee for Responses to FLEX PIM and SOM Orders**
Market Maker	$0.10	$0.07	$0.50
Non-Nasdaq ISE Market Maker (FarMM)	$0.10	$0.07	$0.50
Firm Proprietary / Broker-Dealer	$0.10	$0.07	$0.50
Professional Customer	$0.10	$0.07	$0.50
Priority Customer	$0.00	$0.00	$0.50

The Exchange also proposes that for all executions in FLEX NDX and FLEX XND orders, the applicable index options fees in Options 7, Section 5 will apply.[8] As such, for FLEX NDX orders, the Exchange will assess all Non-Priority Customers[9] a uniform $0.75 per contract fee for regular NDX orders and Priority Customers[10] a

8 "NDX" means A.M. or P.M. settled options on the full value of the Nasdaq 100® Index. See Options 7, Section 1(c)(Definitions). "XND" are options on the Nasdaq 100 Micro Index. See Supplementary Material .04 to Options 3, Section 3.

9 "Non-Priority Customers" include Market Makers, Non-Nasdaq ISE Market Makers (FarMMs), Firm Proprietary / Broker-Dealers, and Professional Customers. See Options 7, Section 1(c).

10 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). See Options 7, Section 1(c).

uniform $0.25 per contract fee for regular NDX orders. In accordance with note 1 of Options 7, Section 5.A, the applicable complex order fees for Non-Select Symbols[11] in Options 7, Section 4 would apply to all executions in complex FLEX NDX orders for Non-Priority Customers.[12] Further in accordance with Note 1, all executions in complex FLEX NDX orders for Priority Customers would be assessed a fee of $0.25 per contract. In accordance with Note 2 of Options 7, Section 5.A, a surcharge of $0.25 per contract would be assessed to all Priority Customer complex executions in FLEX NDX. Lastly, in accordance with Note 3 of Options 7, Section 5.A, a surcharge of $0.25 per contract will be assessed to all market participants for simple and complex executions in FLEX NDX with a premium price of $25.00 or greater.

For FLEX XND orders, the Exchange would assess the same pricing as non-FLEX XND orders as set forth in Options 7, Section 5.C. As such, the Exchange would assess all Non-Priority Customers a $0.10 per contract for FLEX XND orders, and assess all Priority Customers no fees for FLEX XND orders.

Lastly, the Exchange would assess FLEX NDX and FLEX XND orders the Non-Priority Customer license surcharge for index options in Options 7, Section 5.D. Specifically, Non-Priority Customer FLEX NDX orders would be assessed a $0.25 per contract license surcharge and Non-Priority Customer FLEX XND orders would be assessed a $0.10 per contract license surcharge.

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11 "Non-Select Symbols" are options overlying all symbols excluding Select Symbols. See Options 7, Section 1(c). "Select Symbols" are options overlying all symbols listed on the Nasdaq ISE that are in the Penny Interval Program. Id.

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

Flex Auction Fees

An Exchange member may electronically submit a FLEX order into an electronic FLEX Auction pursuant to Options 3A, Section 11(b). For the FLEX Auction, the Exchange proposes assessing $0.10 per contract for Market Makers,[13] Non-Nasdaq ISE Market Makers (FarMM),[14] Firm Proprietary[15] / Broker Dealers,[16] and Professional Customers.[17] The Exchange proposes assessing no fees for Priority Customers.

FLEX PIM and SOM Fees

An Exchange member may electronically submit a FLEX order into a FLEX PIM and FLEX SOM pursuant to Options 3A, Section 12 and Options 3A, Section 13, respectively. For the FLEX PIM and FLEX SOM, the Exchange proposes assessing $0.07 per contract for Market Makers, Non-Nasdaq ISE Market Makers (FarMM), Firm Proprietary / Broker Dealers, and Professional Customers. The Exchange proposes assessing no fees for Priority Customers. The fees will apply to the originating and contra order.

Fees for FLEX PIM and SOM Responses

Any member other than an Initiating Member may submit responses to a FLEX PIM and FLEX SOM pursuant to Options 3A, Section 12(c)(5) and Options 3A, Section

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

14 A "Non-Nasdaq ISE Market Maker" is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934, as amended, registered in the same options class on another options exchange. See Options 7, Section 1(c).

15 A "Firm Proprietary" order is an order submitted by a member for its own proprietary account. See Options 7, Section 1(c).

16 A "Broker-Dealer" order is an order submitted by a member for a broker-dealer account that is not its own proprietary account. See Options 7, Section 1(c).

17 A "Professional Customer" is a person or entity that is not a broker/dealer and is not a Priority Customer. See Options 7, Section 1(c).

13(c)(5), respectively. For responses to a FLEX PIM and FLEX SOM, the Exchange proposes assessing $0.50 per contract for Market Makers, Non-Nasdaq ISE Market Makers (FarMM), Firm Proprietary / Broker Dealers, Professional Customers, and Priority Customers.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[18] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[19] 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."[20]

Likewise, in NetCoalition v. Securities and Exchange Commission[21] ("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

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18 15 U.S.C. 78f(b).

19 15 U.S.C. 78f(b)(4) and (5).

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

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

Congress mandated a cost-based approach.[22] 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."[23]

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'…."[24]

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

Accordingly, the Exchange believes that the fees are reasonable because they are competitive with the fees of other exchanges including those of Cboe Exchange, Inc.

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22 See NetCoalition, at 534 - 535.

23 Id. at 537.

24 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)).

("Cboe").[25] The Exchange's fees for the FLEX Auction, FLEX PIM, and FLEX SOM are comparable with those of Cboe's electronic FLEX Auction, Cboe's FLEX AIM, and Cboe's FLEX SAM.[26] For the FLEX Auction, the Exchange proposes assessing $0.10 per contract for Market Makers, Non-Nasdaq ISE Market Makers (FarMM), Firm Proprietary / Broker Dealers, and Professional Customers. The Exchange proposes assessing no fees for Priority Customers for the FLEX Auction. For the FLEX PIM and FLEX SOM, the Exchange proposes assessing $0.07 per contract for Market Makers, Non-Nasdaq ISE Market Makers (FarMM), Firm Proprietary / Broker Dealers, and Professional Customers. The Exchange proposes assessing no fees for Priority Customers for the FLEX PIM and FLEX SOM and the fees apply to the originating and contra order. For responses to the FLEX PIM and FLEX SOM, the Exchange proposes assessing $0.50 per contract for Market Makers, Non-Nasdaq ISE Market Makers (FarMM), Firm Proprietary / Broker Dealers, Professional Customers, and Priority Customers. These fees are reasonable because they are competitive with market dynamics and consider the price improvement opportunities of the order mechanisms. In particular, the Exchange believes that it is reasonable to assess a slightly lower fee of $0.07 per contract for Non-Priority Customers in FLEX PIM and FLEX SOM compared to the $0.10 per contract fee for Non-Priority Customers in electronic FLEX Auctions because the Exchange seeks to incentivize more activity in FLEX PIM and FLEX SOM for potential price improvement.

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25 See, e.g., Cboe Exchange Inc., Fees Schedule (Feb. 13, 2025), https://cdn.cboe.com/resources/membership/Cboe_FeeSchedule.pdf.

26 Id.

Further, the Exchange believes that the fees are an equitable allocation and are not unfairly discriminatory. The fees for the FLEX Auction, FLEX PIM and FLEX SOM, and the responses to the FLEX PIM and FLEX SOM will apply in a like manner to all similarly situated members except for Priority Customers, who will be assessed no fees in the FLEX Auction and FLEX PIM and FLEX SOM. The Exchange believes that it is equitable and not unfairly discriminatory to assess more favorable pricing for Priority Customers considering that Priority Customers are generally historically assessed the lowest fees compared to other market participants on ISE.[27] Priority Customer order flow enhances liquidity on the Exchange to 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.

As it relates to the FLEX NDX and FLEX XND pricing described above, the Exchange believes that its proposal is reasonable because it will assess the same fees for FLEX NDX and FLEX XND orders as it does today for non-FLEX NDX and non-FLEX XND orders. Similar to non-FLEX NDX and non-FLEX XND, the Exchange seeks to recoup the operational costs for listing proprietary products.[28] 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

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27 See, e.g., Options 7, Section 3 (setting forth Priority Customer maker/taker pricing for Select and Non-Select Symbols).

28 For 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.

price by symbol.[29] Further, the Exchange notes that with its products, market participants are offered an opportunity to either transact non-standard NDX or non-standard XND or separately execute PowerShares QQQ Trust ("QQQ") options.[30] Offering products such as QQQ provides market participants with a variety of choices in selecting the product they desire to utilize to transact the Nasdaq 100® Index.[31] 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 believes that the proposed FLEX NDX and FLEX XND fees are equitable and not unfairly discriminatory because Non-Priority Customers will be assessed the same level of pricing across the board whereas Priority Customers will be assessed lower fees or no fees. The Exchange believes it is equitable and not unfairly discriminatory to assess lower fees for Priority Customers because Priority Customer order flow enhances liquidity on the Exchange to 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.

B. <u>Self-Regulatory Organization's Statement on Burden on Competition</u>

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. The Exchange notes that it operates in a highly competitive market in which market

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29 See pricing for Russell 2000 Index ("RUT") on Chicago Board Options Exchange, Incorporated's ("CBOE") Fees Schedule and on CBOE C2 Exchange, Inc.'s ("C2") Fees Schedule.

30 QQQ is an exchange-traded fund based on the Nasdaq 100® Index.

31 QQQ options overlie the same index as NDX, namely the Nasdaq 100® Index. This relationship between QQQ options and NDX options is similar to the relationship between RUT and the iShares Russell 2000 Index ("IWM"), which is the ETF on RUT.

participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges.

Because competitors are free to modify their own fees in response, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. Further, the Exchange's fees do not impose an undue burden on competition because the Exchange will apply the same fees to all similarly situated members except for Priority Customers in the FLEX Auction and FLEX PIM and FLEX SOM considering that Priority Customers are historically assessed the lowest fees compared to other market participants. Priority Customer order flow enhances liquidity on the Exchange to 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. Nasdaq does not believe that the proposed fee changes place an unnecessary 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.[32] While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on April 7, 2025.

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

IV. Solicitation of Comments

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

Electronic Comments:

- Use the Commission's internet comment form (https://www.sec.gov/rules/sro.shtml); or
- Send an email to rule-comments@sec.gov. Please include file number SR-ISE-2025-10 on the subject line.

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32 15 U.S.C. 78s(b)(3)(A)(ii).

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-2025-10. 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-2025-10 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.[33]

Sherry R. Haywood,

Assistant Secretary.

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[33] 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 6. Other Options Fees and Rebates

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D. [Reserved]FLEX Order Fees(1)

Market Participant	Fee for FLEX Auctions	Fee for FLEX PIM and SOM(2)	Fee for Responses to FLEX PIM and SOM Orders
Market Maker	$0.10	$0.07	$0.50
Non-Nasdaq ISE Market Maker (FarMM)	$0.10	$0.07	$0.50
Firm Proprietary / Broker-Dealer	$0.10	$0.07	$0.50
Professional Customer	$0.10	$0.07	$0.50
Priority Customer	$0.00	$0.00	$0.50

(1) Fees are per contract and apply to single-leg and complex orders. For all executions in FLEX NDX and FLEX XND orders, the applicable index options fees in Options 7, Section 5 will apply.

(2) Fees apply to the originating and contra order.

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