Required fields are shown with yellow backgrounds and asterisks.

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

File No. * SR 2023 - * 12
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 *).

Amend Options 7, Sections 3 and 6.

Contact Information

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

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

Signature

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

Date 06/01/2023
By John 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.

Date: 2023.06.01 11:11:39 -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-2023-12 19b-4.doc	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-2023-12 Exhibit 1.doc	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-2023-12 Exhibit 5.doc	The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change
Partial Amendment Add Remove View	If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) Nasdaq ISE, LLC ("ISE" or "Exchange"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] is filing with the Securities and Exchange Commission ("SEC" or "Commission") a proposal to amend the Exchange's Pricing Schedule at Options 7, Section 3, Regular Order Fees and Rebates and Options 7, Section 6, Other Options Fees and Rebates.

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:

Angela Saccomandi Dunn
Principal Associate General Counsel
Nasdaq, Inc.
215-496-5692

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

[2] 17 CFR 240.19b-4.

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

a. Purpose

The purpose of the proposed rule change is to amend the Exchange's Pricing Schedule at Options 7, Section 3, Regular Order Fees and Rebates, and Options 7, Section 6, Other Options Fees and Rebates.

Options 7, Section 3

Currently, for Regular Orders[3] in Select[4] and Non-Select Symbols,[5] the Exchange assesses all Non-Priority Customer[6] market participants a Fee for PIM[7] Orders of $0.10 per contract.[8] Additionally, today, for Regular Orders in Select Symbols, the Exchange

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3 A "Regular Order" is an order that consists of only a single option series and is not submitted with a stock leg.

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

5 "Non-Select Symbols" are options overlying all symbols excluding Select Symbols. See Options 7, Section 1(c).

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

7 PIM is the Exchange's Price Improvement Auction as described in Options 3, Section 13. A PIM is comprised of the order the Electronic Access Member represents as agent (the "Agency Order") and a counter-side order for the full size of the Agency Order (the "Counter-Side Order"). Responses, including the Counter-Side Order, and Improvement Orders may be entered during the exposure period. See Options 3, Section 13.

8 Priority Customers are not assessed a Fee for PIM Orders. Also, Fees for PIM Orders apply to the originating and contra order. Further, other than for Priority Customer orders, this fee is $0.05 per contract for orders executed by Members that execute an ADV of 7,500 or more contracts in the PIM in a given month. Members that execute an ADV of 12,500 or more contracts in the PIM are charged $0.02 per contract. The discounted fees are applied retroactively to all

assesses all market participants a Fee for Responses to PIM Orders of $0.50 per contract. Finally, today, for Regular Orders in Non-Select Symbols, the Exchange assesses all market participants a Fee for Responses to PIM Orders of $1.10 per contract.[9]

Today, the Exchange pays Electronic Access Members[10] that utilize PIM to execute more than 0.75% of Priority Customer[11] volume of Regular Orders, calculated as a percentage of Customer Total Consolidated Volume ("TCV") per day in a given month, a PIM Break-Up Rebate of $0.26 per contract for Select Symbols and $0.60 per contract for Non-Select Symbols for Priority Customer Regular Orders under 100 contracts that are submitted to PIM and do not trade with their contra order except when those contracts trade against unrelated quotes or orders.[12]

At this time, the Exchange proposes to amend the incentive in note 19 of Options 7, Section 3 to increase the 100 contract requirement to 250 contracts. The Exchange seeks to continue to incentivize Electronic Access Members to submit a greater amount of smaller, more typically sized Priority Customer orders into PIM for price improvement

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eligible PIM volume in that month once the threshold has been reached. See notes 2 and 13 within the Pricing Schedule at Options 7, Section 3.

9 PIM pricing is specified in Options 7, Section 3, Regular Order Fees and Rebates.

10 The term "Electronic Access Member" or "EAM" means a Member that is approved to exercise trading privileges associated with EAM Rights. See General 1, Section 1(a)(6).

11 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). Unless otherwise noted, when used in this Pricing Schedule the term "Priority Customer" includes "Retail" as defined below. See Options 7, Section 1(c).

12 See note 19 of Options 7, Section 3. Also, the Exchange notes that the applicable fee is applied to any contracts for which a rebate is provided.

with the proposed pricing. The Exchange believes the 100 contract threshold may be too narrow to represent all small-sized orders and would like to expand the contract size to 250 contracts to capture a greater amount of smaller sized orders. All Electronic Access Members may participate in a PIM.[13] Accordingly, the rebates, as amended, are designed to incentivize Electronic Access Members to submit a greater amount of Regular Orders executed in PIM to the Exchange, particularly Priority Customer PIM volume.

Options 7, Section 6

Today, the Exchange offers a PIM Rebate within Options 7, Section 6, Other Options Fees and Rebates. Specifically, Options 7, Section 6.C, PIM and Facilitation Rebate, pays a rebate of $0.11 per contract to Electronic Access Members that utilize PIM to execute more than 0.75% of Priority Customer volume in Regular Orders, calculated as a percentage of TCV per day in a given month.[14] The rebate is paid for Priority Customer Regular Orders under 100 contracts that are submitted to PIM.[15]

At this time, the Exchange proposes to amend the PIM Rebate within Options 7, Section 6.C to increase the 100 contract requirement to 250 contracts. The Exchange seeks to continue to incentivize Electronic Access Members to submit a greater amount of smaller, more typically sized Priority Customer orders into PIM for price improvement

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13 Any solicited Counter-Side Orders submitted by an Electronic Access Member to trade against Agency Orders may not be for the account of a Nasdaq ISE Market Maker assigned to the options class. See Supplementary Material .06 to Options 3, Section 13.

14 Eligible volume from Affiliated Members will be aggregated in calculating the percentage.

15 The rebate is paid to the Agency Order as that term is defined within Options 3, Section 13. In the event a Crossing Transaction consists of two Priority Customer Orders, the Exchange would not pay this rebate.

with the proposed pricing. The Exchange believes the 100 contract threshold may be too narrow to represent all small-sized orders and would like to expand the contract size to 250 contracts to capture a greater amount of smaller sized orders. All Electronic Access Members may participate in a PIM.[16] Accordingly, the rebate, as amended, is designed to incentivize Electronic Access Members to submit a greater amount of Regular Orders executed in PIM to the Exchange, particularly Priority Customer PIM volume.

The Exchange also proposes to amend the sentence that states, "Provided this rebate is higher than other rebates within Options 7, Section 6B, this rebate will be paid in lieu of other rebates within this Section B." The references to section "B" should be to section "C."

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[17] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[18] 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 Proposal is Reasonable

The proposed changes to its Pricing Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the

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16 Any solicited Counter-Side Orders submitted by an Electronic Access Member to trade against Agency Orders may not be for the account of a Nasdaq ISE Market Maker assigned to the options class. See Supplementary Material .06 to Options 3, Section 13.

17 15 U.S.C. 78f(b).

18 15 U.S.C. 78f(b)(4) and (5).

market for options transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In NetCoalition v. Securities and Exchange Commission[19] ("NetCoalition"), the D.C. Circuit stated, "[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'…."[20]

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

Options 7, Section 3

The Exchange's proposal to amend the incentive in note 19 of Options 7, Section 3 to increase the 100 contract requirement to 250 contracts with respect to the Priority

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

20 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)).

Customer PIM Break-Up Rebate is reasonable because it is designed to incentivize additional participation in PIM by encouraging market participants to send additional order flow to the Exchange in order to benefit from the increased rebates. In particular, the Exchange believes that this proposal will incentivize Electronic Access Members to submit a greater amount of Regular Orders executed in PIM to the Exchange, particularly Priority Customer PIM volume. The Exchange believes it is reasonable to pay the rebate for orders of 250 contracts or less because the current 100 contract threshold may be too narrow to represent all small-sized orders. The Exchange would like to expand the contract size to 250 contracts to capture a greater amount of smaller sized Priority Customer orders for purposes of the rebate. The Exchange believes the increased contract size will incentivize a greater amount of small-sized Priority Customer orders to be solicited for entry into PIM for price improvement.

The Exchange's proposal to amend the incentive in note 19 of Options 7, Section 3 to increase the 100 contract requirement to 250 contracts with respect to the Priority Customer PIM Break-Up Rebate is equitable and not unfairly discriminatory because any Electronic Access Member may participate in a PIM.[21] While only Electronic Access Members may initiate a PIM, Market Makers may respond to a PIM. While this incentive is specifically targeted towards Priority Customer orders, the Exchange does not believe that this is unfairly discriminatory. Of note, today, Priority Customers pay no Fees for PIM Orders. Priority Customer liquidity benefits all market participants by providing more trading opportunities which attracts market makers. An increase in the

[21] Any solicited Counter-Side Orders submitted by an Electronic Access Member to trade against Agency Orders may not be for the account of a Nasdaq ISE Market Maker assigned to the options class. See Supplementary Material .06 to Options 3, Section 13.

activity of these market participants (particularly in response to pricing) in turn facilitates tighter spreads which may cause an additional corresponding increase in order flow from other market participants. Attracting more liquidity from Priority Customers will benefit all market participants that trade on the ISE. Also, the 250 contracts threshold would be uniformly applied in paying the rebate.

Options 7, Section 6

The Exchange's proposal to amend the PIM rebate in Options 7, Section 6.C to increase the 100 contract requirement to 250 contracts with respect to Priority Customer Regular Orders is reasonable because it is designed to incentivize additional participation in PIM by encouraging market participants to send additional order flow to the Exchange in order to benefit from the increased rebates. In particular, the Exchange believes that this proposal will incentivize Electronic Access Members to submit a greater amount of Regular Orders executed in PIM to the Exchange, particularly Priority Customer PIM volume. The Exchange believes it is reasonable to pay the rebate for orders of 250 contracts or less because the current 100 contract threshold may be too narrow to represent all small-sized orders. The Exchange would like to expand the contract size to 250 contracts to capture a greater amount of smaller sized Priority Customer orders for purposes of the rebate. The Exchange believes the increased contract size will incentivize a greater amount of small-sized Priority Customer orders to be solicited for entry into PIM for price improvement.

The Exchange's proposal to amend the PIM rebate in Options 7, Section 6.C to increase the 100 contract requirement to 250 contracts with respect to Priority Customer Regular Orders is equitable and not unfairly discriminatory because any Electronic

Access Member may participate in a PIM.[22] While only Electronic Access Members may initiate a PIM, Market Makers may respond to a PIM. While this incentive is specifically targeted towards Priority Customer orders, the Exchange does not believe that this is unfairly discriminatory. Of note, today, Priority Customers pay no Fees for PIM Orders. Priority Customer liquidity benefits all market participants by providing more trading opportunities which attracts market makers. An increase in the activity of these market participants (particularly in response to pricing) in turn facilitates tighter spreads which may cause an additional corresponding increase in order flow from other market participants. Attracting more liquidity from Priority Customers will benefit all market participants that trade on the ISE. Also, the 250 contracts threshold would be uniformly applied in paying the rebate.

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.

Intermarket Competition

The Exchange operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges. Because competitors are free to modify their

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22 Any solicited Counter-Side Orders submitted by an Electronic Access Member to trade against Agency Orders may not be for the account of a Nasdaq ISE Market Maker assigned to the options class. See Supplementary Material .06 to Options 3, Section 13.

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 because other options exchanges offer similar price improvement auctions as well as break-up rebates and customer order rebates.

Moreover, as noted above, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and rebate changes. In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

<u>Intramarket Competition</u>

The proposal is designed to attract additional liquidity to ISE. Specifically, amending the incentives to obtain greater PIM Break-Up Rebates will incentivize market participants to direct liquidity to ISE's PIM. All market participants will benefit from any increase in market activity that the proposal effectuates.

<u>Options 7, Section 3</u>

The Exchange's proposal to amend the incentive in note 19 of Options 7, Section 3 to increase the 100 contract requirement to 250 contracts with respect to the Priority Customer PIM Break-Up Rebate does not impose an undue burden on competition because any Electronic Access Member may enter orders into PIM. While only Electronic Access Members may initiate a PIM, the Exchange does not believe that this creates an undue burden on competition because Market Makers may respond to a PIM. While this incentive is specifically targeted towards Priority Customer orders, the Exchange does not believe that this is unfairly discriminatory. Today, Priority Customers pay no fees for PIM Orders. Priority Customer liquidity benefits all market participants by providing more trading opportunities which attracts market makers. An increase in the activity of these market participants (particularly in response to pricing) in turn facilitates tighter spreads which may cause an additional corresponding increase in order flow from other market participants. Attracting more liquidity from Priority Customers will benefit all market participants that trade on the ISE. Also, the 250 contracts threshold would be uniformly applied in paying the rebate.

Options 7, Section 6

The Exchange's proposal to amend the PIM rebate in Options 7, Section 6.C to increase the 100 contract requirement to 250 contracts with respect to Priority Customer Regular Orders does not impose an undue burden on competition because any Electronic Access Member may participate in a PIM. While only Electronic Access Members may initiate a PIM, Market Makers may respond to a PIM. While this incentive is specifically targeted towards Priority Customer orders, the Exchange does not believe that this is unfairly discriminatory. Of note, today, Priority Customers pay no Fees for PIM Orders. Priority Customer liquidity benefits all market participants by providing more trading opportunities which attracts market makers. An increase in the activity of these market participants (particularly in response to pricing) in turn facilitates tighter spreads which may cause an additional corresponding increase in order flow from other market participants. Attracting more liquidity from Priority Customers will benefit all market participants that trade on the ISE. Also, the 250 contracts threshold would be uniformly applied in paying the rebate.

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,[23] 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 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.

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23 15 U.S.C. 78s(b)(3)(A)(ii).

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-2023-12)

June __, 2023

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Options 7, Sections 3 and 6

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 June 1, 2023, Nasdaq ISE, LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's Pricing Schedule at Options 7, Section 3, Regular Order Fees and Rebates and Options 7, Section 6, Other Options Fees and Rebates.

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

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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 purpose of the proposed rule change is to amend the Exchange's Pricing Schedule at Options 7, Section 3, Regular Order Fees and Rebates, and Options 7, Section 6, Other Options Fees and Rebates.

Options 7, Section 3

Currently, for Regular Orders[3] in Select[4] and Non-Select Symbols,[5] the Exchange assesses all Non-Priority Customer[6] market participants a Fee for PIM[7] Orders of $0.10

3 A "Regular Order" is an order that consists of only a single option series and is not submitted with a stock leg.

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

5 "Non-Select Symbols" are options overlying all symbols excluding Select Symbols. See Options 7, Section 1(c).

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

7 PIM is the Exchange's Price Improvement Auction as described in Options 3, Section 13. A PIM is comprised of the order the Electronic Access Member represents as agent (the "Agency Order") and a counter-side order for the full size

per contract.[8] Additionally, today, for Regular Orders in Select Symbols, the Exchange assesses all market participants a Fee for Responses to PIM Orders of $0.50 per contract. Finally, today, for Regular Orders in Non-Select Symbols, the Exchange assesses all market participants a Fee for Responses to PIM Orders of $1.10 per contract.[9]

Today, the Exchange pays Electronic Access Members[10] that utilize PIM to execute more than 0.75% of Priority Customer[11] volume of Regular Orders, calculated as a percentage of Customer Total Consolidated Volume ("TCV") per day in a given month, a PIM Break-Up Rebate of $0.26 per contract for Select Symbols and $0.60 per contract for Non-Select Symbols for Priority Customer Regular Orders under 100 contracts that are submitted to PIM and do not trade with their contra order except when those contracts

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of the Agency Order (the "Counter-Side Order"). Responses, including the Counter-Side Order, and Improvement Orders may be entered during the exposure period. See Options 3, Section 13.

8 Priority Customers are not assessed a Fee for PIM Orders. Also, Fees for PIM Orders apply to the originating and contra order. Further, other than for Priority Customer orders, this fee is $0.05 per contract for orders executed by Members that execute an ADV of 7,500 or more contracts in the PIM in a given month. Members that execute an ADV of 12,500 or more contracts in the PIM are charged $0.02 per contract. The discounted fees are applied retroactively to all eligible PIM volume in that month once the threshold has been reached. See notes 2 and 13 within the Pricing Schedule at Options 7, Section 3.

9 PIM pricing is specified in Options 7, Section 3, Regular Order Fees and Rebates.

10 The term "Electronic Access Member" or "EAM" means a Member that is approved to exercise trading privileges associated with EAM Rights. See General 1, Section 1(a)(6).

11 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). Unless otherwise noted, when used in this Pricing Schedule the term "Priority Customer" includes "Retail" as defined below. See Options 7, Section 1(c).

trade against unrelated quotes or orders.[12]

At this time, the Exchange proposes to amend the incentive in note 19 of Options 7, Section 3 to increase the 100 contract requirement to 250 contracts. The Exchange seeks to continue to incentivize Electronic Access Members to submit a greater amount of smaller, more typically sized Priority Customer orders into PIM for price improvement with the proposed pricing. The Exchange believes the 100 contract threshold may be too narrow to represent all small-sized orders and would like to expand the contract size to 250 contracts to capture a greater amount of smaller sized orders. All Electronic Access Members may participate in a PIM.[13] Accordingly, the rebates, as amended, are designed to incentivize Electronic Access Members to submit a greater amount of Regular Orders executed in PIM to the Exchange, particularly Priority Customer PIM volume.

Options 7, Section 6

Today, the Exchange offers a PIM Rebate within Options 7, Section 6, Other Options Fees and Rebates. Specifically, Options 7, Section 6.C, PIM and Facilitation Rebate, pays a rebate of $0.11 per contract to Electronic Access Members that utilize PIM to execute more than 0.75% of Priority Customer volume in Regular Orders, calculated as a percentage of TCV per day in a given month.[14] The rebate is paid for

12 See note 19 of Options 7, Section 3. Also, the Exchange notes that the applicable fee is applied to any contracts for which a rebate is provided.

13 Any solicited Counter-Side Orders submitted by an Electronic Access Member to trade against Agency Orders may not be for the account of a Nasdaq ISE Market Maker assigned to the options class. See Supplementary Material .06 to Options 3, Section 13.

14 Eligible volume from Affiliated Members will be aggregated in calculating the percentage.

Priority Customer Regular Orders under 100 contracts that are submitted to PIM.[15]

At this time, the Exchange proposes to amend the PIM Rebate within Options 7, Section 6.C to increase the 100 contract requirement to 250 contracts. The Exchange seeks to continue to incentivize Electronic Access Members to submit a greater amount of smaller, more typically sized Priority Customer orders into PIM for price improvement with the proposed pricing. The Exchange believes the 100 contract threshold may be too narrow to represent all small-sized orders and would like to expand the contract size to 250 contracts to capture a greater amount of smaller sized orders. All Electronic Access Members may participate in a PIM.[16] Accordingly, the rebate, as amended, is designed to incentivize Electronic Access Members to submit a greater amount of Regular Orders executed in PIM to the Exchange, particularly Priority Customer PIM volume.

The Exchange also proposes to amend the sentence that states, "Provided this rebate is higher than other rebates within Options 7, Section 6B, this rebate will be paid in lieu of other rebates within this Section B." The references to section "B" should be to section "C".

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[17] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[18]

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15 The rebate is paid to the Agency Order as that term is defined within Options 3, Section 13. In the event a Crossing Transaction consists of two Priority Customer Orders, the Exchange would not pay this rebate.

16 Any solicited Counter-Side Orders submitted by an Electronic Access Member to trade against Agency Orders may not be for the account of a Nasdaq ISE Market Maker assigned to the options class. See Supplementary Material .06 to Options 3, Section 13.

17 15 U.S.C. 78f(b).

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 Proposal is Reasonable

The proposed changes to its Pricing Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In NetCoalition v. Securities and Exchange Commission[19] ("NetCoalition"), the D.C. Circuit stated, "[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'…."[20]

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options transaction services. The Exchange is only one of sixteen options exchanges to which market participants may direct their order flow. Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues

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18 15 U.S.C. 78f(b)(4) and (5).

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

20 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)).

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.

Options 7, Section 3

The Exchange's proposal to amend the incentive in note 19 of Options 7, Section 3 to increase the 100 contract requirement to 250 contracts with respect to the Priority Customer PIM Break-Up Rebate is reasonable because it is designed to incentivize additional participation in PIM by encouraging market participants to send additional order flow to the Exchange in order to benefit from the increased rebates. In particular, the Exchange believes that this proposal will incentivize Electronic Access Members to submit a greater amount of Regular Orders executed in PIM to the Exchange, particularly Priority Customer PIM volume. The Exchange believes it is reasonable to pay the rebate for orders of 250 contracts or less because the current 100 contract threshold may be too narrow to represent all small-sized orders. The Exchange would like to expand the contract size to 250 contracts to capture a greater amount of smaller sized Priority Customer orders for purposes of the rebate. The Exchange believes the increased contract size will incentivize a greater amount of small-sized Priority Customer orders to be solicited for entry into PIM for price improvement.

The Exchange's proposal to amend the incentive in note 19 of Options 7, Section 3 to increase the 100 contract requirement to 250 contracts with respect to the Priority Customer PIM Break-Up Rebate is equitable and not unfairly discriminatory because any

Electronic Access Member may participate in a PIM.[21] While only Electronic Access Members may initiate a PIM, Market Makers may respond to a PIM. While this incentive is specifically targeted towards Priority Customer orders, the Exchange does not believe that this is unfairly discriminatory. Of note, today, Priority Customers pay no Fees for PIM Orders. Priority Customer liquidity benefits all market participants by providing more trading opportunities which attracts market makers. An increase in the activity of these market participants (particularly in response to pricing) in turn facilitates tighter spreads which may cause an additional corresponding increase in order flow from other market participants. Attracting more liquidity from Priority Customers will benefit all market participants that trade on the ISE. Also, the 250 contracts threshold would be uniformly applied in paying the rebate.

Options 7, Section 6

The Exchange's proposal to amend the PIM rebate in Options 7, Section 6.C to increase the 100 contract requirement to 250 contracts with respect to Priority Customer Regular Orders is reasonable because it is designed to incentivize additional participation in PIM by encouraging market participants to send additional order flow to the Exchange in order to benefit from the increased rebates. In particular, the Exchange believes that this proposal will incentivize Electronic Access Members to submit a greater amount of Regular Orders executed in PIM to the Exchange, particularly Priority Customer PIM volume. The Exchange believes it is reasonable to pay the rebate for orders of 250 contracts or less because the current 100 contract threshold may be too narrow to

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[21] Any solicited Counter-Side Orders submitted by an Electronic Access Member to trade against Agency Orders may not be for the account of a Nasdaq ISE Market Maker assigned to the options class. See Supplementary Material .06 to Options 3, Section 13.

represent all small-sized orders. The Exchange would like to expand the contract size to 250 contracts to capture a greater amount of smaller sized Priority Customer orders for purposes of the rebate. The Exchange believes the increased contract size will incentivize a greater amount of small-sized Priority Customer orders to be solicited for entry into PIM for price improvement.

The Exchange's proposal to amend the PIM rebate in Options 7, Section 6.C to increase the 100 contract requirement to 250 contracts with respect to Priority Customer Regular Orders is equitable and not unfairly discriminatory because any Electronic Access Member may participate in a PIM.[22] While only Electronic Access Members may initiate a PIM, Market Makers may respond to a PIM. While this incentive is specifically targeted towards Priority Customer orders, the Exchange does not believe that this is unfairly discriminatory. Of note, today, Priority Customers pay no Fees for PIM Orders. Priority Customer liquidity benefits all market participants by providing more trading opportunities which attracts market makers. An increase in the activity of these market participants (particularly in response to pricing) in turn facilitates tighter spreads which may cause an additional corresponding increase in order flow from other market participants. Attracting more liquidity from Priority Customers will benefit all market participants that trade on the ISE. Also, the 250 contracts threshold would be uniformly applied in paying the rebate.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any

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22 Any solicited Counter-Side Orders submitted by an Electronic Access Member to trade against Agency Orders may not be for the account of a Nasdaq ISE Market Maker assigned to the options class. See Supplementary Material .06 to Options 3, Section 13.

burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Intermarket Competition

The Exchange operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited because other options exchanges offer similar price improvement auctions as well as break-up rebates and customer order rebates.

Moreover, as noted above, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and rebate changes. In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

Intramarket Competition

The proposal is designed to attract additional liquidity to ISE. Specifically, amending the incentives to obtain greater PIM Break-Up Rebates will incentivize market participants to direct liquidity to ISE's PIM. All market participants will benefit from any increase in market activity that the proposal effectuates.

Options 7, Section 3

The Exchange's proposal to amend the incentive in note 19 of Options 7, Section 3 to increase the 100 contract requirement to 250 contracts with respect to the Priority Customer PIM Break-Up Rebate does not impose an undue burden on competition because any Electronic Access Member may enter orders into PIM. While only Electronic Access Members may initiate a PIM, the Exchange does not believe that this creates an undue burden on competition because Market Makers may respond to a PIM. While this incentive is specifically targeted towards Priority Customer orders, the Exchange does not believe that this is unfairly discriminatory. Today, Priority Customers pay no fees for PIM Orders. Priority Customer liquidity benefits all market participants by providing more trading opportunities which attracts market makers. An increase in the activity of these market participants (particularly in response to pricing) in turn facilitates tighter spreads which may cause an additional corresponding increase in order flow from other market participants. Attracting more liquidity from Priority Customers will benefit all market participants that trade on the ISE. Also, the 250 contracts threshold would be uniformly applied in paying the rebate.

Options 7, Section 6

The Exchange's proposal to amend the PIM rebate in Options 7, Section 6.C to increase the 100 contract requirement to 250 contracts with respect to Priority Customer Regular Orders does not impose an undue burden on competition because any Electronic Access Member may participate in a PIM. While only Electronic Access Members may initiate a PIM, Market Makers may respond to a PIM. While this incentive is specifically targeted towards Priority Customer orders, the Exchange does not believe that this is unfairly discriminatory. Of note, today, Priority Customers pay no Fees for PIM Orders. Priority Customer liquidity benefits all market participants by providing more trading opportunities which attracts market makers. An increase in the activity of these market participants (particularly in response to pricing) in turn facilitates tighter spreads which may cause an additional corresponding increase in order flow from other market participants. Attracting more liquidity from Priority Customers will benefit all market participants that trade on the ISE. Also, the 250 contracts threshold would be uniformly applied in paying the rebate.

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

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[23] 15 U.S.C. 78s(b)(3)(A)(ii).

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-ISE-2023-12 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-2023-12. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (http://www.sec.gov/rules/sro.shtml).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-ISE-2023-12 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

J. Matthew DeLesDernier
Assistant Secretary

[24] 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 7 Pricing Schedule

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Section 3. Regular Order Fees and Rebates

Select Symbols

Market Participant	**Maker Rebate / Fee[(17)]**	**Taker Fee[(17)]**	**Fee for Crossing Orders Except PIM Orders[(1) (2)]**	**Fee for PIM Orders [(1) (2) (13)]**	**Fee for Responses to Crossing Orders Except PIM Orders**	**Fee for Responses to PIM Orders**	**Facilitation and Solicitation Break-up Rebate[(4)]**	**PIM Break-up Rebate**
Market Maker[(8)]	$0.18[(5) (10) (11)]	$0.45	$0.20	$0.10	$0.50	$0.50	N/A	N/A
Non-Nasdaq ISE Market Maker (FarMM)	$0.18[(11)]	$0.46	$0.20	$0.10	$0.50	$0.50	($0.15)	N/A
Firm Proprietary / Broker-Dealer	$0.18[(11)]	$0.46	$0.20	$0.10	$0.50	$0.50	($0.15)	N/A
Professional Customer	$0.18[(11)]	$0.46	$0.20[(16)]	$0.10	$0.50	$0.50	($0.15)	N/A
Priority Customer	$0.00	$0.37	$0.00	$0.00	$0.50	$0.50	($0.15)	($0.00)[19]

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

Market Participant	Maker Rebate / Fee(17)	Taker Fee(3)(17)	Fee for Crossing Orders Except PIM Orders(1)(2)	Fee for PIM Orders (1) (2) (13)	Fee for Responses to Crossing Orders Except PIM Orders	Fee for Responses to PIM Orders	Facilitation and Solicitation Break-up Rebate(4)	PIM Break-up Rebate
Market Maker(8)	$0.70(5)	$0.90	$0.20	$0.10	$1.10	$1.10	N/A	N/A
Non-Nasdaq ISE Market Maker (FarMM)	$0.70	$0.90	$0.20	$0.10	$1.10	$1.10	($0.15)	N/A
Firm Proprietary / Broker-Dealer	$0.70	$0.90	$0.20	$0.10	$1.10	$1.10	($0.15)	N/A
Professional Customer	$0.70	$0.90	$0.20(16)	$0.10	$1.10	$1.10	($0.15)	N/A
Priority Customer	($0.86)(15) (18)	$0.00	$0.00	$0.00	$1.10	$1.10	($0.15)	($0.00) 19

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19. Electronic Access Members that utilize PIM to execute more than 0.75% of Priority Customer volume of Regular Orders, calculated as a percentage of Customer Total Consolidated Volume ("TCV") per day in a given month, will receive a PIM Break-Up Rebate of $0.26 per contract in Select Symbols and $0.60 per contract in Non-Select Symbols for Priority Customer Regular Orders under [100]<u>250</u> contracts that are submitted to PIM and do not trade with their contra order except when those contracts trade against unrelated quotes or orders.

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Section 6. Other Options Fees and Rebates

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C. PIM and Facilitation Rebate

» Electronic Access Members that utilize PIM to execute more than 0.75% of Priority Customer volume in Regular Orders, calculated as a percentage of Customer Total Consolidated Volume ("TCV") per day in a given month, will receive an $0.11 per contract rebate for Priority Customer Regular Orders under [100]250 contracts that are submitted to PIM. The rebate would be paid to the Agency Order as that term is defined within Options 3, Section 13. Eligible volume from Affiliated Members will be aggregated in calculating the percentage. Provided this rebate is higher than other rebates within Options 7, Section 6[B]C, this rebate will be paid in lieu of other rebates within this Section [B]C. In the event a Crossing Transaction consists of two Priority Customer Orders, the Exchange would not pay this rebate.

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