Required fields are shown with yellow backgrounds and asterisks.

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

File No. * SR 2024 - * 11
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 amend the complex order rebates in the Exchanges Pricing Schedule at Options 7, Section 4.

Contact Information

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

First Name *	Sun	Last Name *	Kim
Title *	Associate General Counsel		
E-mail *	sun.kim@nasdaq.com		
Telephone *	(646) 420-7816	Fax	

Signature

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

Date 03/08/2024

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.

John A. Zecca
Date: 2024.03.08 12:10:47 -05'00'

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-2024-11 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-2024-11 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-2024-11 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 amend the complex order rebates in the Exchange's Pricing Schedule at Options 7, Section 4.

A notice of the proposed rule change for publication in the Federal Register is attached as Exhibit 1. The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors (the "Board"). Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

Questions and comments on the proposed rule change may be directed to:

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

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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 purpose of the proposed rule change is to amend the complex order rebates in the Exchange's Pricing Schedule.[3] Today, as set forth in Options 7, Section 4, the Exchange offers tiered complex order Priority Customer[4] rebates for Select Symbols[5] and Non-Select Symbols[6] based on the Priority Customer Complex Tier achieved.[7] The tiered complex order Priority Customer rebates for Select Symbols and Non-Select Symbols are presently as follows:

Priority Customer Complex Tier	**Total Affiliated Member or Affiliated Entity Complex Order Volume (Excluding Crossing Orders and Responses to Crossing Orders) Calculated as a Percentage of Customer Total Consolidated Volume**	**Rebate for Select Symbols**	**Rebate for Non-Select Symbols**
Tier 1	0.000% - 0.200%	($0.25)	($0.50)
Tier 2	Above 0.200% - 0.400%	($0.30)	($0.60)
Tier 3	Above 0.400% - 0.450%	($0.35)	($0.75)

3 The Exchange initially filed the proposed pricing changes on February 29, 2024 with an operative date of March 1, 2024 (SR-ISE-2024-08). On March 8, 2024, the Exchange withdrew that filing and replaced it with this filing.

4 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).

5 "Select Symbols" are options overlying all symbols listed on the Nasdaq ISE that are in the Penny Interval Program.

6 "Non-Select Symbols" are options overlying all symbols excluding Select Symbols.

7 Priority Customer Complex Tiers are based on Total Affiliated Member or Affiliated Entity Complex Order Volume (Excluding Crossing Orders and Responses to Crossing Orders) Calculated as a Percentage of Customer Total Consolidated Volume. All Complex Order volume executed on the Exchange, including volume executed by Affiliated Members, is included in the volume calculation, except for volume executed as Crossing Orders and Responses to Crossing Orders. Affiliated Entities may aggregate their Complex Order volume for purposes of calculating Priority Customer Rebates. The Appointed OFP would receive the rebate associated with the qualifying volume tier based on aggregated volume. See Options 7, Section 4, note 16. As set forth in Options 7, Section 1(c), an Appointed OFP is an Order Flow Provider who has been appointed by a Market Maker for purposes of qualifying as an Affiliated Entity.

Tier 4	Above 0.450% - 0.750%	($0.40)	($0.80)
Tier 5	Above 0.750% - 1.000%	($0.45)	($0.85)
Tier 6	Above 1.000% - 1.350%	($0.48)	($0.95)
Tier 7	Above 1.350% - 1.750%	($0.54)	($1.00)
Tier 8	Above 1.750% - 2.750%	($0.55)	($1.10)
Tier 9	Above 2.750% - 4.500%	($0.56)	($1.12)
Tier 10	Above 4.500%	($0.57)	($1.15)

The above rebates are provided per contract per leg if the order trades with Non-Priority Customer[8] orders in the complex order book.

The Exchange now proposes to modify Priority Customer Complex Tiers 3 – 5 in the following manner:

Priority Customer Complex Tier	**Total Affiliated Member or Affiliated Entity Complex Order Volume (Excluding Crossing Orders and Responses to Crossing Orders) Calculated as a Percentage of Customer Total Consolidated Volume**	**Rebate for Select Symbols**	**Rebate for Non-Select Symbols**
Tier 3	Above 0.400% - 0.550%	($0.40)	($0.80)
Tier 4	Above 0.550% - 0.750%	($0.45)	($0.85)
Tier 5	Above 0.750% - 1.000%	($0.46)	($0.90)

As amended, the rebates for Tiers 3 – 5 are increasing across the board for Select Symbols and Non-Symbols. In addition, the Exchange is adjusting the volume qualifications for Tiers 3 and 4 by increasing the upper limit of Tier 3 from 0.45% to 0.55% and the lower limit of Tier 4 from 0.45% to 0.55%. While the Exchange is increasing the volume qualifications in this manner, the Exchange is simultaneously

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

increasing the related rebates such that Members who would fall within the 0.45% to 0.55% volume threshold range would receive the same rebate under this proposal as they would today (i.e., $0.40 for Select Symbols and $0.80 for Non-Select Symbols). Accordingly, the Exchange expects that there will be little to no impact on Members who would currently fall within the 0.45% to 0.55% volume threshold range as a result of this change. Furthermore, the Exchange is increasing the Tier 5 rebates without changing the tier qualifications so that Members can send the same amount of complex order flow as they do today to receive the larger Priority Customer complex rebates described above. Overall, the Exchange believes that the proposed changes to Priority Customer Complex Tiers 3 – 5 will attract more complex order flow to ISE because Members may be incentivized to send more complex orders to ISE to receive the increased rebates.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[10] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange's proposed changes to its Pricing Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has

9 15 U.S.C. 78f(b).

10 15 U.S.C. 78f(b)(4) and (5).

long been recognized by the courts. In NetCoalition v. Securities and Exchange Commission, the D.C. Circuit stated as follows: "[n]o one disputes that competition for order flow is 'fierce.' … As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'…."[11]

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."[12]

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options security transaction services. The Exchange is only one of seventeen 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

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11 NetCoalition v. SEC, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

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

competing venues in response to changes in their respective pricing schedules. As such, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

The Exchange believes that the proposed changes to Priority Customer Complex Tiers 3 -5 discussed above are reasonable because they are designed to attract more complex order flow to ISE to the benefit of all market participants. As discussed above, the rebates for Tiers 3 – 5 are increasing across the board for Select Symbols and Non-Symbols. In addition, the Exchange is adjusting the volume qualifications for Tiers 3 and 4 by increasing the upper limit of Tier 3 from 0.45% to 0.55% and the lower limit of Tier 4 from 0.45% to 0.55%. As discussed above, the Exchange expects there will be little to no impact on Members who would currently fall within the 0.45% to 0.55% volume threshold range as a result of this change because they would receive the same rebates under this proposal as they would today (i.e., $0.40 for Select Symbols and $0.80 for Non-Select Symbols). The Exchange also believes that overall, all Members in Tiers 3 and 4 will benefit from the proposed rebates and that these rebates will continue to incentivize Members to send more complex order flow to ISE. Furthermore, the Exchange is increasing the Tier 5 rebates without changing the tier qualifications so that Members can send the same amount of complex order flow as they do today to receive the larger Priority Customer complex rebates described above. Overall, the Exchange believes that the proposed changes to Priority Customer Complex Tiers 3 – 5 will attract more complex order flow to ISE because Members may be incentivized to send more complex orders to ISE to receive the increased rebates.

The Exchange believes that offering the complex order Priority Customer rebate program, as modified, to only Priority Customers is equitable and not unfairly discriminatory as the proposed changes are intended to increase Priority Customer complex order flow to ISE. An increase in 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 that 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. In terms of intra-market competition, the Exchange does not believe that its proposal will place any category of market participant at a competitive disadvantage. While the proposed changes to the complex rebates described above apply directly to Priority Customers, the Exchange believes that the changes will ultimately fortify and encourage activity on the Exchange to the extent the proposed changes incentivize increased Priority Customer complex order flow to ISE. An increase in 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 that may interact with this order flow.

In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other 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. 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.

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

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

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[13] 15 U.S.C. 78s(b)(3)(A)(ii).

the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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

Not applicable.

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

Not applicable.

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

Not applicable.

11. Exhibits

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

5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. ; File No. SR-ISE-2024-11)

March __, 2024

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Complex Order Rebates in the Exchange's Pricing Schedule at Options 7, Section 4

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 8, 2024, Nasdaq ISE, LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend the complex order rebates in the Exchange's Pricing Schedule at Options 7, Section 4.

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

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

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

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

2 17 CFR 240.19b-4.

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

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

1. Purpose

The purpose of the proposed rule change is to amend the complex order rebates in the Exchange's Pricing Schedule.[3] Today, as set forth in Options 7, Section 4, the Exchange offers tiered complex order Priority Customer[4] rebates for Select Symbols[5] and Non-Select Symbols[6] based on the Priority Customer Complex Tier achieved.[7] The tiered complex order Priority Customer rebates for Select Symbols and Non-Select Symbols are presently as follows:

Priority Customer Complex Tier	Total Affiliated Member or Affiliated Entity Complex Order Volume (Excluding Crossing Orders and Responses to Crossing	Rebate for Select Symbols	Rebate for Non-Select Symbols

3 The Exchange initially filed the proposed pricing changes on February 29, 2024 with an operative date of March 1, 2024 (SR-ISE-2024-08). On March 8, 2024, the Exchange withdrew that filing and replaced it with this filing.

4 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).

5 "Select Symbols" are options overlying all symbols listed on the Nasdaq ISE that are in the Penny Interval Program.

6 "Non-Select Symbols" are options overlying all symbols excluding Select Symbols.

7 Priority Customer Complex Tiers are based on Total Affiliated Member or Affiliated Entity Complex Order Volume (Excluding Crossing Orders and Responses to Crossing Orders) Calculated as a Percentage of Customer Total Consolidated Volume. All Complex Order volume executed on the Exchange, including volume executed by Affiliated Members, is included in the volume calculation, except for volume executed as Crossing Orders and Responses to Crossing Orders. Affiliated Entities may aggregate their Complex Order volume for purposes of calculating Priority Customer Rebates. The Appointed OFP would receive the rebate associated with the qualifying volume tier based on aggregated volume. See Options 7, Section 4, note 16. As set forth in Options 7, Section 1(c), an Appointed OFP is an Order Flow Provider who has been appointed by a Market Maker for purposes of qualifying as an Affiliated Entity.

	Orders) Calculated as a Percentage of Customer Total Consolidated Volume		
Tier 1	0.000% - 0.200%	($0.25)	($0.50)
Tier 2	Above 0.200% - 0.400%	($0.30)	($0.60)
Tier 3	Above 0.400% - 0.450%	($0.35)	($0.75)
Tier 4	Above 0.450% - 0.750%	($0.40)	($0.80)
Tier 5	Above 0.750% - 1.000%	($0.45)	($0.85)
Tier 6	Above 1.000% - 1.350%	($0.48)	($0.95)
Tier 7	Above 1.350% - 1.750%	($0.54)	($1.00)
Tier 8	Above 1.750% - 2.750%	($0.55)	($1.10)
Tier 9	Above 2.750% - 4.500%	($0.56)	($1.12)
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The above rebates are provided per contract per leg if the order trades with Non-Priority Customer[8] orders in the complex order book.

The Exchange now proposes to modify Priority Customer Complex Tiers 3 – 5 in the following manner:

Priority Customer Complex Tier	**Total Affiliated Member or Affiliated Entity Complex Order Volume (Excluding Crossing Orders and Responses to Crossing Orders) Calculated as a Percentage of Customer Total Consolidated Volume**	**Rebate for Select Symbols**	**Rebate for Non-Select Symbols**
Tier 3	Above 0.400% - 0.550%	($0.40)	($0.80)
Tier 4	Above 0.550% - 0.750%	($0.45)	($0.85)
Tier 5	Above 0.750% - 1.000%	($0.46)	($0.90)

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

As amended, the rebates for Tiers 3 – 5 are increasing across the board for Select Symbols and Non-Symbols. In addition, the Exchange is adjusting the volume qualifications for Tiers 3 and 4 by increasing the upper limit of Tier 3 from 0.45% to 0.55% and the lower limit of Tier 4 from 0.45% to 0.55%. While the Exchange is increasing the volume qualifications in this manner, the Exchange is simultaneously increasing the related rebates such that Members who would fall within the 0.45% to 0.55% volume threshold range would receive the same rebate under this proposal as they would today (i.e., $0.40 for Select Symbols and $0.80 for Non-Select Symbols). Accordingly, the Exchange expects that there will be little to no impact on Members who would currently fall within the 0.45% to 0.55% volume threshold range as a result of this change. Furthermore, the Exchange is increasing the Tier 5 rebates without changing the tier qualifications so that Members can send the same amount of complex order flow as they do today to receive the larger Priority Customer complex rebates described above. Overall, the Exchange believes that the proposed changes to Priority Customer Complex Tiers 3 – 5 will attract more complex order flow to ISE because Members may be incentivized to send more complex orders to ISE to receive the increased rebates.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[10] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4) and (5).

other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange's proposed changes to its Pricing Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In NetCoalition v. Securities and Exchange Commission, the D.C. Circuit stated as follows: "[n]o one disputes that competition for order flow is 'fierce.' … As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'…."[11]

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

11 NetCoalition v. SEC, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

broader forms that are most important to investors and listed companies."[12]

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

The Exchange believes that the proposed changes to Priority Customer Complex Tiers 3 -5 discussed above are reasonable because they are designed to attract more complex order flow to ISE to the benefit of all market participants. As discussed above, the rebates for Tiers 3 – 5 are increasing across the board for Select Symbols and Non-Symbols. In addition, the Exchange is adjusting the volume qualifications for Tiers 3 and 4 by increasing the upper limit of Tier 3 from 0.45% to 0.55% and the lower limit of Tier 4 from 0.45% to 0.55%. As discussed above, the Exchange expects there will be little to no impact on Members who would currently fall within the 0.45% to 0.55% volume threshold range as a result of this change because they would receive the same rebates under this proposal as they would today (i.e., $0.40 for Select Symbols and $0.80 for Non-Select Symbols). The Exchange also believes that overall, all Members in Tiers 3 and 4 will benefit from the proposed rebates and that these rebates will continue to

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

incentivize Members to send more complex order flow to ISE. Furthermore, the Exchange is increasing the Tier 5 rebates without changing the tier qualifications so that Members can send the same amount of complex order flow as they do today to receive the larger Priority Customer complex rebates described above. Overall, the Exchange believes that the proposed changes to Priority Customer Complex Tiers 3 – 5 will attract more complex order flow to ISE because Members may be incentivized to send more complex orders to ISE to receive the increased rebates.

The Exchange believes that offering the complex order Priority Customer rebate program, as modified, to only Priority Customers is equitable and not unfairly discriminatory as the proposed changes are intended to increase Priority Customer complex order flow to ISE. An increase in 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 that may interact with this order flow.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of intra-market competition, the Exchange does not believe that its proposal will place any category of market participant at a competitive disadvantage. While the proposed changes to the complex rebates described above apply directly to Priority Customers, the Exchange believes that the changes will ultimately fortify and encourage activity on the Exchange to the extent the proposed changes incentivize increased Priority Customer complex order flow to ISE. An increase in 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 that may interact with this order flow.

In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other 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. 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.

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.[13] 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

[13] 15 U.S.C. 78s(b)(3)(A)(ii).

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-2024-11 on the subject line.

Paper Comments:

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

All submissions should refer to file number SR-ISE-2024-11. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (https://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-ISE-2024-11 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.[14]

Sherry R. Haywood,

Assistant Secretary.

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[14] 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Deleted text is [bracketed]. New text is <u>underlined</u>.

NASDAQ ISE, LLC RULES

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Options 7 Pricing Schedule

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Section 4. Complex Order Fees and Rebates(5) (12) (15)

Priority Customer Rebates

Priority Customer Complex Tier(7) (13)(16)(17)	**Total Affiliated Member or Affiliated Entity Complex Order Volume (Excluding Crossing Orders and Responses to Crossing Orders) Calculated as a Percentage of Customer Total Consolidated Volume**	**Rebate for Select Symbols(1)**	**Rebate for Non-Select Symbols(1)(4)**
Tier 1	0.000% - 0.200%	($0.25)	($0.50)
Tier 2	Above 0.200% - 0.400%	($0.30)	($0.60)
Tier 3	Above 0.400% - 0.[45]<u>550</u>%	($0.[35]<u>40</u>)	($0.[75]<u>80</u>)
Tier 4	Above 0.[45]<u>550</u>% - 0.750%	($0.[40]<u>45</u>)	($0.[80]<u>85</u>)
Tier 5	Above 0.750% - 1.000%	($0.[45]<u>46</u>)	($0.[85]<u>90</u>)
Tier 6	Above 1.000% - 1.350%	($0.48)	($0.95)
Tier 7	Above 1.350% - 1.750%	($0.54)	($1.00)
Tier 8	Above 1.750% - 2.750%	($0.55)	($1.10)
Tier 9	Above 2.750% - 4.500%	($0.56)	($1.12)
Tier 10	Above 4.500%	($0.57)	($1.15)

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