


Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 47		SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4		File No. * SR 2025 - * 20 Amendment No. (req. for Amendments *)	
Filing by Nasdaq ISE, LLC					
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934					
Initial * <input checked="" type="checkbox"/>		Amendment * <input type="checkbox"/>		Withdrawal <input type="checkbox"/>	
Section 19(b)(2) * <input type="checkbox"/>		Section 19(b)(3)(A) * <input checked="" type="checkbox"/>		Section 19(b)(3)(B) * <input type="checkbox"/>	
Pilot <input type="checkbox"/>		Extension of Time Period for Commission Action * <input type="checkbox"/>		Date Expires * <input type="text"/>	
		Rule			
		<input type="checkbox"/> 19b-4(f)(1)		<input type="checkbox"/> 19b-4(f)(4)	
		<input checked="" type="checkbox"/> 19b-4(f)(2)		<input type="checkbox"/> 19b-4(f)(5)	
		<input type="checkbox"/> 19b-4(f)(3)		<input type="checkbox"/> 19b-4(f)(6)	
Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010 Section 806(e)(1) * <input type="checkbox"/>			Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934 Section 3C(b)(2) * <input type="checkbox"/>		
Exhibit 2 Sent As Paper Document <input type="checkbox"/>			Exhibit 3 Sent As Paper Document <input type="checkbox"/>		
<b>Description</b> Provide a brief description of the action (limit 250 characters, required when Initial is checked *). <div>Amend Options Regulatory Fee</div>					
<b>Contact Information</b> 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					
<b>Signature</b> Pursuant to the requirements of the Securities Exchange of 1934, Nasdaq ISE, LLC has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized. Date 07/17/2025 (Title *) By John Zecca EVP and Chief Legal Officer (Name *)					
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. <div> Date: 2025.07.17 16:56:45 -04'00'</div>					

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SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

**Form 19b-4 Information \***

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change \***

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SR-ISE-2025-20 Exhibit 1.docx		

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A - Notice of Proposed Rule Change, Security-Based Swap Submission, or Advanced Notice by Clearing Agencies \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2- Notices, Written Comments, Transcripts, Other Communications**

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

☐

Exhibit Sent As Paper Document

**Exhibit 3 - Form, Report, or Questionnaire**

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

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Exhibit Sent As Paper Document

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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SR-ISE-2025-20 Exhibit 5.docx		

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) Nasdaq ISE, LLC (“ISE” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to amend ISE’s Pricing Schedule at Options 7, Section 9C, Options Regulatory Fee, to amend its current methodology of collection.

While the changes proposed herein are effective upon filing, the Exchange has designated the proposed rule change to be operative on January 2, 2026.

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

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

<sup>2</sup> 17 CFR 240.19b-4.

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

a. Purpose

ISE proposes to amend its current methodology of assessment and collection of the Options Regulatory Fee or “ORF” to assess ORF only for options transactions that occur on ISE that are cleared in the Customer<sup>3</sup> range at The Options Clearing Corporation (“OCC”). With this proposal ISE would not assess ORF for transactions that occur on other exchanges. Below is a more detailed description of the proposal.

**Background on Current ORF**

Today, ISE assesses its ORF for each Customer option transaction that is either: (1) executed by a Member<sup>4</sup> on ISE; or (2) cleared by an ISE Member at OCC in the Customer range, even if the transaction was executed by a non-Member of ISE, regardless of the exchange on which the transaction occurs.<sup>5</sup> If the OCC clearing member is an ISE Member, ORF is assessed and collected on all ultimately cleared Customer contracts (after adjustment for CMTA<sup>6</sup>); and (2) if the OCC clearing member

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<sup>3</sup> Currently, the ORF is assessed by ISE and collected via the OCC from Priority Customers, Professional Customers, and Broker-Dealers that are not affiliated with a clearing member. These market participants clear in the “C” range at OCC. ORF will continue to be assessed and collected from these market participants under the new methodology. On ISE, 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 ISE Options 1, Section 1(a)(37); a “Professional Customer” is a person or entity that is not a broker/dealer and is not a Priority Customer; and a “Broker-Dealer” order is an order submitted by a Member for a broker-dealer account that is not its own proprietary account.

<sup>4</sup> The term “Member” means an organization that has been approved to exercise trading rights associated with Exchange Rights. See General 1, Section 1(a)(13).

<sup>5</sup> The Exchange uses reports from OCC when assessing and collecting the ORF. Market participants must record the appropriate account origin code on all orders at the time of entry of the order. The Exchange represents that it has surveillances in place to verify that members mark orders with the correct account origin code.

<sup>6</sup> CMTA or Clearing Member Trade Assignment is a form of “give-up” whereby the position will be assigned to a specific clearing firm at OCC.

is not an ISE Member, ORF is collected only on the cleared Customer contracts executed at ISE, taking into account any CMTA instructions which may result in collecting the ORF from a non-Member.<sup>7</sup> The current ISE ORF is \$0.0013 per contract side.

Today, in the case where a Member both executes a transaction and clears the transaction, the ORF will be assessed to and collected from that Member. Today, in the case where a Member executes a transaction and a different Member clears the transaction, the ORF will be assessed to and collected from the Member who clears the transaction and not the Member who executes the transaction. Today, in the case where a non-Member executes a transaction at an away market and a Member clears the transaction, the ORF will be assessed to and collected from the Member who clears the transaction. Today, in the case where a Member executes a transaction on ISE and a non-Member clears the transaction, the ORF will be assessed to the Member that executed the transaction on ISE and collected from the non-Member who cleared the transaction. Today, in the case where a Member executes a transaction at an away market and a non-Member ultimately clears the transaction, the ORF will not be assessed to the Member who executed the transaction or collected from the non-Member who cleared the transaction because the Exchange does not have access to the data to make absolutely certain that ORF should apply. Further, the data does not allow the Exchange to identify the Member executing the trade at an away market.

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<sup>7</sup> By way of example, if Broker A, an ISE Member, routes a Customer order to CBOE and the transaction executes on CBOE and clears in Broker A's OCC Clearing account, ORF will be collected by ISE from Broker A's clearing account at OCC via direct debit. While this transaction was executed on a market other than ISE, it was cleared by an ISE Member in the member's OCC clearing account in the Customer range, therefore there is a regulatory nexus between ISE and the transaction. If Broker A was not an ISE Member, then no ORF should be assessed and collected because there is no nexus; the transaction did not execute on ISE nor was it cleared by an ISE Member.

*ORF Revenue and Monitoring of ORF*

Today, the Exchange monitors the amount of revenue collected from the ORF (“ORF Regulatory Revenue”) to ensure that it, in combination with other regulatory fees and fines, does not exceed Options Regulatory Costs.<sup>8</sup> In determining whether an expense is considered an Options Regulatory Cost, the Exchange reviews all costs and makes determinations if there is a nexus between the expense and a regulatory function. The Exchange notes that fines collected by the Exchange in connection with a disciplinary matter offset Options Regulatory Cost.

ORF Regulatory Revenue, when combined with all of the Exchange’s other regulatory fees and fines, is designed to recover the Options Regulatory Costs to the Exchange of the supervision and regulation of member Customer options business including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities. Options Regulatory Costs include direct regulatory expenses and certain indirect expenses in support of the regulatory function. The direct expenses include in-house and third-party service provider costs to support the day-to-day regulatory work such as surveillance, investigations and examinations. The indirect expenses are only those expenses that are in support of the regulatory functions, such areas include Office of the General Counsel, technology, finance, and internal audit. Indirect expenses will not exceed 35% of the

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<sup>8</sup> The regulatory costs for options comprise a subset of the Exchange’s regulatory budget that is specifically related to options regulatory expenses and encompasses the cost to regulate all Members’ options activity (“Options Regulatory Cost”).

total Options Regulatory Costs, in which case direct expenses could be 65% or more of total Options Regulatory Costs.<sup>9</sup>

### **Proposal for January 2, 2026**

ISE has been reviewing its methodologies for the assessment and collection of ORF. As a result of this review, ISE proposes to modify its current ORF to continue to assess ORF for options transactions cleared by OCC in the Customer range, however ORF would be assessed to each ISE Member for executions that occur on ISE. Specifically, the ORF would continue to be collected by OCC on behalf of ISE from ISE Members and non-Members for all Customer transactions executed on ISE. ORF would be assessed and collected on all ultimately cleared Customer contracts, taking into account adjustments for CMTA that were provided to ISE the same day as the trade.<sup>10</sup>

Further, the Exchange would bill ORF according to the clearing instructions provided on the execution. More specifically, ISE proposes to assess ORF based on the clearing instruction provided on the execution on trade date and would not take into consideration CMTA changes or transfers that occur at OCC.<sup>11</sup> As a result of this proposed rule change, if a Member executes a Customer transaction on ISE and is the clearing member on record on the transaction on ISE, the ORF will be assessed to that Member. With this proposal, in the case where a Member executes a Customer transaction on ISE and a different Member is the clearing member on record on the transaction on ISE, the ORF will be assessed to and collected from the Member who is the clearing member on record on the transaction and not the Member who executes the

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<sup>9</sup> Direct and indirect expenses are based on the Exchange's 2025 Regulatory Budget.

<sup>10</sup> Adjustments to CMTA that occur at OCC would not be taken into account.

<sup>11</sup> Adjustments that were made the same day as the trade on ISE will be taken into account.

transaction. Additionally, in the case where a Member executes a Customer transaction on ISE and a non-ISE Member is the clearing member on record on the transaction on ISE, the ORF will be assessed to the non-ISE Member who is the clearing member on record on the transaction and not the Member who executes the transaction. With this proposal, in the case where a Member executes a Customer transaction on a non-ISE exchange, ISE will not assess an ORF, regardless of how the transaction is cleared. As is the case today, OCC will collect ORF from OCC clearing members on behalf of ISE based on ISE's instructions.

With this proposal, the current ISE ORF of \$0.0013 per contract side would be increased to \$0.0092 per contract side. With this proposal, the Exchange will endeavor to ensure that ORF Regulatory Revenue generated from ORF will not exceed 82% of Options Regulatory Cost. ISE will continue to ensure that ORF Regulatory Revenue does not exceed Options Regulatory Cost. As is the case today, the Exchange will notify Members via an Options Trader Alert of any change in the amount of the fee at least 30 calendar days prior to the effective date of the change. In this case, the Exchange will notify Members via an Options Trader Alert of these changes at least 30 calendar days prior to January 2, 2026.

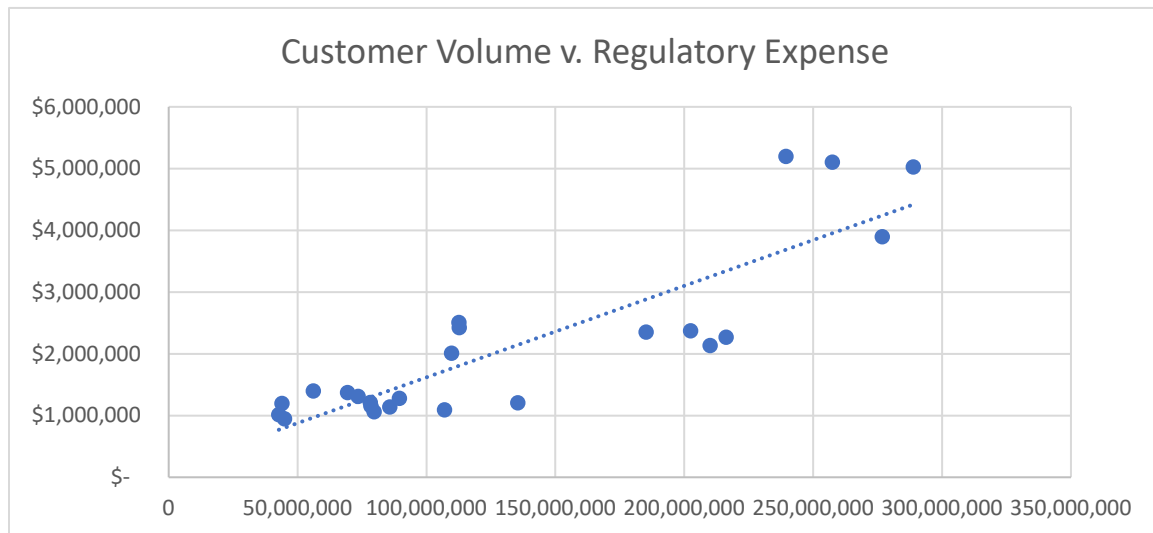
The Exchange utilized historical and current data from its affiliated options exchanges to create a new regression model that would tie expenses attributable to regulation to a respective source.<sup>12</sup> To that end, the Exchange plotted Customer volumes

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<sup>12</sup> This model seeks to relate Options Regulatory Cost to historical volumes on each Nasdaq affiliated exchange by market participant. In creating this model, the Exchange did not rely on data from a single SRO as it had in the past.



from each exchange<sup>13</sup> against Options Regulatory Cost from each exchange for the Time Period. Specifically, the Exchange utilized standard charting functionality to create a linear regression. The charting functionality yields a “slope” of the line, representing the marginal cost of regulation, as well as an “intercept,” representing the fixed cost of regulation.<sup>14</sup> The Exchange considered using non-linear models, but concluded that the best  $R^2$  (“R-Squared”)<sup>15</sup> results came from a standard  $y = Mx + B$  format for regulatory expense. The R-Squared for the charting method ranged from 70% to 90% historically. As noted, the plots below represent the Time Period. The X-axis reflects Customer volumes by exchange, by quarter and the Y-axis reflects regulatory expense by exchange.



The results of this modelling indicated a high correlation and intercept for the

<sup>13</sup> The Exchange utilized data from all Nasdaq affiliated options exchanges to create this model from data obtained from Q3 2024 to Q2 2025 (“Time Period”).

<sup>14</sup> The Exchange utilized data from Time Period to calculate the slope and intercept.

<sup>15</sup> R-Squared is a statistical measure that indicates how much of the variation of a dependent variable is explained by an independent variable in a regression model. The formula for calculating R-squared is:  $R^2 = 1 - \text{Unexplained Variation} / \text{Total Variation}$ .

baseline cost of regulating the options market as a whole. Specifically, the regression model indicated that (1) the marginal cost of regulation is measurable, and significantly attributable to Customer activity; and (2) the fixed cost of setting up a regulatory regime should arguably be dispersed across the industry so that all options exchanges have substantially similar revenue streams to satisfy the “intercept” element of cost. When seeking to offset the “set-up” cost of regulation, the Exchange attempted several levels of attribution.<sup>16</sup> This led the Exchange to utilize a model with a two-factor regression on a quarterly basis (Q3 2024 to Q2 2025) of volumes relative to the pool of expense data for the six Nasdaq affiliated options exchanges. Once again, standard spreadsheet functionality (including the Data Analysis Packet) was used to determine the mathematics for this model.<sup>17</sup>

Utilizing the new regression model, and assumptions in the proposal, the model demonstrates that Customer volumes are directly attributable to marginal cost. Applying the regression coefficient values historically, the Exchange established a “normalization” by per options exchange. The primary driver of this need for “normalization” are negotiated regulatory contracts that were negotiated at different points in time, yielding differences in per contract regulatory costs by exchange. Normalization is therefore the average of a given exchange’s historical period (Q3 2024 to Q2 2025) ratio of regulatory expense to revenue when using the regressed values (for Customer ORF) that yields an

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<sup>16</sup> Of note, through analysis of the results of this regression model, there was no positive correlation that could be established between Customer away volume and regulatory expense. The most successful attribution was related to industry wide Firm Proprietary and Broker-Dealer Transaction volume which accounted for approximately 3-4% of the regulatory expense both on-exchange and away.

<sup>17</sup> The Exchange notes that various exchanges negotiate their respective contracts independently with FINRA creating some variability. Additionally, an exchange with a floor component would create some variability, although ISE does not have a floor.

effective rate by exchange. The “normalization” was then multiplied to a “targeted collection rate” of approximately 82% to arrive at ORF rates for Customer. Of note, when comparing the ORF rates generated from this method, historically, there appears to be a very tight relationship between the estimated modeled collection and actual expense and the regulatory expenses for that same period.

One other important aspect of this modeling is the input of Options Regulatory Costs. The Exchange notes that in defining Options Regulatory Costs it accounts for the nexus between the expense and options regulation. By way of example, the Exchange excludes certain indirect expenses such as payroll expenses, accounts receivable, accounts payable, marketing, executive level expenses and corporate systems.

The Exchange will continue to monitor ORF Regulatory Revenue to ensure that it, in combination with other regulatory fees and fines, does not exceed Options Regulatory Costs. In determining whether an expense is considered an Options Regulatory Cost, the Exchange will continue to review all costs and makes determinations if there is a nexus between the expense and a regulatory function. The Exchange notes that fines collected by the Exchange in connection with a disciplinary matter will continue to offset Options Regulatory Cost.

As is the case today, ORF Regulatory Revenue is designed to recover a material portion of the Options Regulatory Costs to the Exchange for the supervision and regulation of Members’ transactions, including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities. As discussed above, Options Regulatory Costs include direct

regulatory expenses<sup>18</sup> and certain indirect expenses in support of the regulatory function.<sup>19</sup>

Finally, the Exchange notes that this proposal will sunset on February 1, 2026, at which point the Exchange would revert back to the ORF methodology and rate (\$0.0013 per contract side) that was in effect prior to this rule change.<sup>20</sup>

b. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>21</sup> Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act<sup>22</sup>, which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its members, and other persons using its facilities. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>23</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes the proposed ORF to be assessed on January 2, 2026, is reasonable, equitable and not unfairly discriminatory for various reasons. First, the

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<sup>18</sup> The direct expenses include in-house and third-party service provider costs to support the day-to-day regulatory work such as surveillances, investigations and examinations.

<sup>19</sup> The indirect expenses include support from such areas as Office of the General Counsel, technology, finance and internal audit.

<sup>20</sup> The Exchange proposes to reconsider the sunset date in 2026 and determine whether to proceed with the proposed ORF structure at that time.

<sup>21</sup> 15 U.S.C. 78f(b).

<sup>22</sup> 15 U.S.C. 78f(b)(4).

<sup>23</sup> 15 U.S.C. 78f(b)(5).

Exchange believes that continuing to assess only Customers an ORF is reasonable because Customer transactions account for a material portion of ISE's Options Regulatory Cost.<sup>24</sup> A large portion of the Options Regulatory Cost relates to Customer allocation because obtaining Customer information may be more time intensive. For example, non-Customer market participants are subject to various regulatory and reporting requirements which provides the Exchange certain data with respect to these market participants. In contrast, Customer information is known by Members of the Exchange and is not readily available to ISE.<sup>25</sup> The Exchange may have to take additional steps to understand the facts surrounding particular trades involving a Customer which may require requesting such information from a broker-dealer. Further, Customers require more Exchange regulatory services based on the amount of options business they conduct. For example, there are Options Regulatory Costs associated with main office and branch office examinations (e.g., staff expenses), as well as investigations into Customer complaints and the terminations of registered persons. As a result, the Options Regulatory Costs associated with administering the Customer component of the Exchange's overall regulatory program are materially higher than the Options Regulatory Costs associated with administering the non-Customer component

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<sup>24</sup> The Exchange notes that the regulatory costs relating to monitoring Members with respect to Customer trading activity are generally higher than the regulatory costs associated with Members that do not engage in customer trading activity, which tends to be more automated and less labor-intensive. By contrast, regulating Members that engage in Customer trading activity is generally more labor intensive and requires a greater expenditure of human and technical resources as the Exchange needs to review not only the trading activity on behalf of Customers, but also the Member's relationship with its Customers via more labor-intensive exam-based programs. As a result, the costs associated with administering the Customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-Customer component of the regulatory program.

<sup>25</sup> The Know Your Customer or "KYC" provision is the obligation of the broker-dealer.

when coupled with the amount of volume attributed to such Customer transactions.

Utilizing the new regression model, and assumptions in the proposal, it appears that ISE's Customer regulation occurs to a large extent on Exchange. Utilizing the new regression model, and assumptions in the proposal, the Exchange does not believe that significant Options Regulatory Costs result from activity attributed to Customers that may occur across options markets. To that end, with this proposal, the amount of Options Regulatory Cost allocated to on-exchange Customer transactions is significant. Also, with respect to Customer transactions, options volume continues to surpass volume from other options participants. Additionally, there are rules in the Exchange's Rulebook that deal exclusively with Customer transactions, such as rules involving doing business with a Customer, which would not apply to Firm Proprietary and Broker-Dealer Transactions.<sup>26</sup> For these reasons, regulating Customer trading activity is "much more labor-intensive" and therefore, more costly.

Second, while the Exchange acknowledges that there is a cost to regulate Market Makers, unlike other market participants, Market Makers have various regulatory requirements with respect to quoting as provided for in Options 2, Section 4. Specifically, Market Makers have certain quoting requirements with respect to their assigned options series as provided in Options 2, Section 5. Primary Market Makers are obligated to quote in the Opening Process and intra-day.<sup>27</sup> Additionally, Market Makers may enter quotes in the Opening Process to open an option series and they are required to quote intra-day.<sup>28</sup> Further, unlike other market participants, Primary Market Makers and

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<sup>26</sup> See ISE Options 10 Rules.

<sup>27</sup> See ISE Options 3, Section 8 and Options 2, Section 5.

<sup>28</sup> Id.

Market Makers have obligations to compete with other Market Makers to improve the market in all series of options classes to which the Market Maker is appointed and to update market quotations in response to changed market conditions in all series of options classes to which the Market Maker is appointed.<sup>29</sup> Also, Primary Market Makers and Market Makers incur other costs imposed by the Exchange related to their quoting obligations in addition to other fees paid by other market participants. Market Makers are subject to a number of fees, unlike other market participants. Primary Market Makers and Competitive Market Makers pay Access Fees<sup>30</sup> in addition to other fees paid by other market participants. These liquidity providers are critical market participants in that they are the only market participants that are required to provide liquidity to ISE and are necessary for opening the market. Excluding Market Maker transactions from ORF allows these market participants to manage their costs and consequently their business model more effectively thus enabling them to better allocate resources to other technologies that are necessary to manage risk and capacity to ensure that these market participants continue to compete effectively on ISE in providing tight displayed quotes which in turn benefits markets generally and market participants specifically. Permitting these market participants to utilize their resources to quote tighter in the market. Tighter quotes benefits Customers as well as other market participants who interact with that liquidity. Finally, the Exchange notes that Market Makers may transact orders in addition to submitting quotes on the Exchange. This proposal would except orders submitted by Market Makers, in addition to quotes, for purposes of ORF. Market Makers

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<sup>29</sup> See ISE Options 2, Section 4(b)(1) and (3).

<sup>30</sup> See ISE Options 7, Section 8A.

utilize orders in their assigned options series to sweep the order book. The Exchange believes the quantity of orders utilized by Market Makers in their assigned series is de minimis. In their unassigned options series, Market Makers utilize orders to hedge their risk or respond to auctions. The Exchange notes that the number of orders submitted by Market Makers in their unassigned options series are far below the cap<sup>31</sup> and therefore de minimis.

Additionally, while the Exchange acknowledges that there is a cost to regulate Firm Proprietary and Broker-Dealer transactions, the Exchange notes that these market participants do not entail significant volume when compared to Customer transactions. The Exchange notes that Firm Proprietary and Broker-Dealer market participants are more sophisticated. There are not the same protections in place for Firm Proprietary and Broker-Dealer Transactions as compared to Customer transactions. The regulation of Firm Proprietary and Broker-Dealer transactions is less resource intensive than the regulation of Customer transactions and accounts for a small percentage of Options Regulatory Costs.

Third, assessing ORF on Customer executions that occur on ISE is reasonable, equitable and not unfairly discriminatory because it will avoid overlapping ORFs that would otherwise be assessed by ISE and other options exchanges that also assess an ORF. With this proposal, Customers executions that occur on other exchanges would no longer be subject to an ISE ORF. Further, the Exchange believes that collecting 82% of Options Regulatory Cost is appropriate and correlates to the degree of regulatory

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<sup>31</sup> See ISE Options 2, Section 6. The total number of contracts executed during a quarter by a Market Maker in options classes to which it is not appointed may not exceed twenty-five percent (25%) of the total number of contracts traded. In the Exchange's experience, Market Maker's are generally below the 25% cap.



responsibility and Options Regulatory Cost borne by the Exchange with respect to Customer transactions. The Exchange's proposal continues to ensure that Options Regulatory Revenue, in combination with other regulatory fees and fines, does not exceed Options Regulatory Costs. Fines collected by the Exchange in connection with a disciplinary matter will continue to offset Options Regulatory Cost. Capping ORF collected at 82% of Options Regulatory Cost, commencing January 2, 2026, is reasonable, equitable and not unfairly discriminatory as the Options Regulatory Revenue collected will offset the corresponding Options Regulatory Cost associated with on-exchange Customer transactions. The Exchange will review the ORF Regulatory Revenue and would amend the ORF if it finds that its ORF Regulatory Revenue exceeds its projections.<sup>32</sup>

The proposed sunset date of February 1, 2026 is reasonable, equitable and not unfairly discriminatory. If all options exchanges have adopted a similar ORF model, the Exchange notes that it would not sunset the proposal on February 1, 2026. The Exchange proposes to reconsider the sunset date in early 2026 and determine whether to proceed with the proposed ORF structure at that time.

#### 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 intra-market competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed changes to ORF do not impose an undue burden on inter-market competition because ORF is a regulatory fee that supports regulation in furtherance of the purposes of the Act. The Exchange notes, however, the proposed

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<sup>32</sup> ISE would submit a rule change to the Commission to amend ORF rates.

change is not designed to address any competitive issues. The Exchange is obligated to ensure that the amount of ORF Regulatory Revenue, in combination with its other regulatory fees and fines, does not exceed ORF Regulatory Cost.

Continuing to assess ORF only on Customer executions that occur on ISE does not impose an undue burden on intra-market competition. Customer transactions account for a large portion of the Exchange's surveillance expense. With respect to Customer transactions, options volume continues to surpass volume from other options participants. Additionally, there are rules in the Exchange's Rulebook that deal exclusively with Customer transactions, such as rules involving doing business with a Customer, which would not apply to Non-Customer transactions.<sup>33</sup> For these reasons, regulating Customer trading activity is "much more labor-intensive" and therefore, more costly. Further, the Exchange believes that a large portion of the Options Regulatory Cost relates to Customer allocation because obtaining Customer information may be more time intensive. For example, non-Customer market participants are subject to various regulatory and reporting requirements which provides the Exchange certain data with respect to these market participants. In contrast, Customer information is known by Members of the Exchange and is not readily available to ISE.<sup>34</sup> The Exchange may have to take additional steps to understand the facts surrounding particular trades involving a Customer which may require requesting such information from a broker-dealer. Further, Customers require more Exchange regulatory services based on the amount of options business they conduct. For example, there are Options Regulatory Costs associated with

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<sup>33</sup> See ISE Options 10 Rules.

<sup>34</sup> The Know Your Customer or "KYC" provision is the obligation of the broker-dealer.

main office and branch office examinations (e.g., staff expenses), as well as investigations into Customer complaints and the terminations of registered persons. As a result, the Options Regulatory Costs associated with administering the Customer component of the Exchange's overall regulatory program are materially higher than the Options Regulatory Costs associated with administering the non-Customer component when coupled with the amount of volume attributed to such Customer transactions. Not attributing significant Options Regulatory Costs to Customers for activity that may occur across options markets does not impose an undue burden on intra-market competition because the data in the regression model demonstrates that ISE's Customer regulation occurs to a large extent on Exchange.

The Exchange believes that not assessing ORF on Market Makers does not impose an undue burden on intra-market competition because these liquidity providers are critical market participants in that they are the only market participants that are required to provide liquidity to ISE and are necessary for opening the market. Excluding Market Maker transactions from ORF does not impose an intra-market burden on competition, rather it allows these market participants to manage their costs and consequently their business model more effectively thus enabling them to better allocate resources to other technologies that are necessary to manage risk and capacity to ensure that these market participants continue to compete effectively on ISE in providing tight displayed quotes which in turn benefits markets generally and market participants specifically. Unlike other market participants, Market Makers have various regulatory requirements with respect to quoting as provided for in Options 2, Section 4. Specifically, Market Makers have certain quoting requirements with respect to their

assigned options series as provided in Options 2, Section 5. Primary Market Makers are obligated to quote in the Opening Process and intra-day.<sup>35</sup> Additionally, Market Makers may enter quotes in the Opening Process to open an option series and they are required to quote intra-day.<sup>36</sup> Further, unlike other market participants, Primary Market Makers and Market Makers have obligations to compete with other Market Makers to improve the market in all series of options classes to which the Market Maker is appointed and to update market quotations in response to changed market conditions in all series of options classes to which the Market Maker is appointed.<sup>37</sup> Primary Market Makers and Market Makers incur other costs imposed by the Exchange related to their quoting obligations in addition to other fees paid by other market participants. Market Makers are subject to a number of fees, unlike other market participants. Primary Market Makers and Competitive Market Makers pay Access Fees<sup>38</sup> in addition to other fees paid by other market participants. Finally, the Exchange notes that Market Makers may transact orders on the Exchange in addition to submitting quotes. The Exchange's proposal to except orders submitted by Market Makers, in addition to quotes, for purposes of ORF does not impose an undue burden on intra-market competition because Market Makers utilize orders in their assigned options series to sweep the order book. Further, the Exchange believes the quantity of orders utilized by Market Makers in their assigned series is de minimis. In their unassigned options series, Market Makers utilize orders to hedge their risk or respond to auctions. The Exchange notes that the number of orders submitted by

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<sup>35</sup> See ISE Options 3, Section 8 and Options 2, Section 5.

<sup>36</sup> Id.

<sup>37</sup> See ISE Options 2, Section 4(b)(1) and (3).

<sup>38</sup> See ISE Options 7, Section 8A.

Market Makers in their unassigned options series are far below the cap<sup>39</sup> and therefore de minimis.

The Exchange believes that not assessing ORF on Firm Proprietary and Broker-Dealer market participants does not impose an undue burden on intra-market competition because the regulation of Firm Proprietary and Broker-Dealer transactions is less resource intensive than the regulation of Customer transactions. The volume generated from Firm Proprietary and Broker-Dealer transactions does not entail significant volume when compared to Customer transactions. Therefore, excluding Firm Proprietary and Broker-Dealer transactions from ORF does not impose an undue burden on intra-market competition as Customer transactions account for a material portion of ISE's Options Regulatory Cost.<sup>40</sup>

The Exchange's proposal to assess ORF only on Customer executions that occur on ISE does not impose an intra-market burden on competition because the amount of activity surveilled across exchanges is small when compared to the overall number of Exchange rules that are surveilled by ISE for on-Exchange activity. Limiting the amount

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<sup>39</sup> See ISE Options 2, Section 6(b)(1) and (2). The total number of contracts executed during a quarter by a Competitive Market Maker in options classes to which it is not appointed may not exceed twenty-five percent (25%) of the total number of contracts traded by such Competitive Market Maker in classes to which it is appointed and with respect to which it was quoting pursuant to Options 2, Section 5(e)(1). The total number of contracts executed during a quarter by a Primary Market Maker in options classes to which it is not appointed may not exceed twenty-five percent (25%) of the total number of contracts traded per each Primary Market Maker Membership.

<sup>40</sup> The Exchange notes that the regulatory costs relating to monitoring Members with respect to customer trading activity are generally higher than the regulatory costs associated with Members that do not engage in customer trading activity, which tends to be more automated and less labor-intensive. By contrast, regulating Members that engage in customer trading activity is generally more labor intensive and requires a greater expenditure of human and technical resources as the Exchange needs to review not only the trading activity on behalf of customers, but also the Member's relationship with its customers via more labor-intensive exam-based programs. As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-customer component of the regulatory program.

of ORF assessed to activity that occurs on ISE avoids overlapping ORFs that would otherwise be assessed by ISE and other options exchanges that also assess an ORF. Further, capping ORF collected at 82% of Options Regulatory Cost commencing January 2, 2026, does not impose an intra-market burden on competition as this collection accounts for the collection only on Customer executions. The Exchange will review the ORF Regulatory Revenue and would amend the ORF if it finds that its ORF Regulatory Revenue exceeds its projections.<sup>41</sup>

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

No written comments were either solicited or received.

6. Extension of Time Period for Commission Action

Not applicable.

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

Pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>42</sup> the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

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

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<sup>41</sup> ISE would submit a rule change to the Commission to amend ORF rates.

<sup>42</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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

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

Not applicable.

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

Not applicable.

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

Not applicable.

11. Exhibits

1. Notice of Proposed Rule Change for publication in the Federal Register.
5. Text of the proposed rule change.

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_; File No. SR-ISE-2025-20)

July \_\_, 2025

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup>, and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 17, 2025, Nasdaq ISE, LLC (“ISE” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend ISE’s Pricing Schedule at Options 7, Section 9C, Options Regulatory Fee, to amend its current methodology of collection.

While the changes proposed herein are effective upon filing, the Exchange has designated the proposed rule change to be operative on January 2, 2026.

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

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

<sup>2</sup> 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

ISE proposes to amend its current methodology of assessment and collection of the Options Regulatory Fee or “ORF” to assess ORF only for options transactions that occur on ISE that are cleared in the Customer<sup>3</sup> range at The Options Clearing Corporation (“OCC”). With this proposal ISE would not assess ORF for transactions that occur on other exchanges. Below is a more detailed description of the proposal.

#### **Background on Current ORF**

Today, ISE assesses its ORF for each Customer option transaction that is either: (1) executed by a Member<sup>4</sup> on ISE; or (2) cleared by an ISE Member at OCC in the Customer range, even if the transaction was executed by a non-Member of ISE,

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<sup>3</sup> Currently, the ORF is assessed by ISE and collected via the OCC from Priority Customers, Professional Customers, and Broker-Dealers that are not affiliated with a clearing member. These market participants clear in the “C” range at OCC. ORF will continue to be assessed and collected from these market participants under the new methodology. On ISE, 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 ISE Options 1, Section 1(a)(37); a “Professional Customer” is a person or entity that is not a broker/dealer and is not a Priority Customer; and a “Broker-Dealer” order is an order submitted by a Member for a broker-dealer account that is not its own proprietary account.

<sup>4</sup> The term “Member” means an organization that has been approved to exercise trading rights associated with Exchange Rights. See General 1, Section 1(a)(13).

regardless of the exchange on which the transaction occurs.<sup>5</sup> If the OCC clearing member is an ISE Member, ORF is assessed and collected on all ultimately cleared Customer contracts (after adjustment for CMTA<sup>6</sup>); and (2) if the OCC clearing member is not an ISE Member, ORF is collected only on the cleared Customer contracts executed at ISE, taking into account any CMTA instructions which may result in collecting the ORF from a non-Member.<sup>7</sup> The current ISE ORF is \$0.0013 per contract side.

Today, in the case where a Member both executes a transaction and clears the transaction, the ORF will be assessed to and collected from that Member. Today, in the case where a Member executes a transaction and a different Member clears the transaction, the ORF will be assessed to and collected from the Member who clears the transaction and not the Member who executes the transaction. Today, in the case where a non-Member executes a transaction at an away market and a Member clears the transaction, the ORF will be assessed to and collected from the Member who clears the transaction. Today, in the case where a Member executes a transaction on ISE and a non-Member clears the transaction, the ORF will be assessed to the Member that executed the transaction on ISE and collected from the non-Member who cleared the transaction.

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<sup>5</sup> The Exchange uses reports from OCC when assessing and collecting the ORF. Market participants must record the appropriate account origin code on all orders at the time of entry of the order. The Exchange represents that it has surveillances in place to verify that members mark orders with the correct account origin code.

<sup>6</sup> CMTA or Clearing Member Trade Assignment is a form of “give-up” whereby the position will be assigned to a specific clearing firm at OCC.

<sup>7</sup> By way of example, if Broker A, an ISE Member, routes a Customer order to CBOE and the transaction executes on CBOE and clears in Broker A’s OCC Clearing account, ORF will be collected by ISE from Broker A’s clearing account at OCC via direct debit. While this transaction was executed on a market other than ISE, it was cleared by an ISE Member in the member’s OCC clearing account in the Customer range, therefore there is a regulatory nexus between ISE and the transaction. If Broker A was not an ISE Member, then no ORF should be assessed and collected because there is no nexus; the transaction did not execute on ISE nor was it cleared by an ISE Member.

Today, in the case where a Member executes a transaction at an away market and a non-Member ultimately clears the transaction, the ORF will not be assessed to the Member who executed the transaction or collected from the non-Member who cleared the transaction because the Exchange does not have access to the data to make absolutely certain that ORF should apply. Further, the data does not allow the Exchange to identify the Member executing the trade at an away market.

*ORF Revenue and Monitoring of ORF*

Today, the Exchange monitors the amount of revenue collected from the ORF (“ORF Regulatory Revenue”) to ensure that it, in combination with other regulatory fees and fines, does not exceed Options Regulatory Costs.<sup>8</sup> In determining whether an expense is considered an Options Regulatory Cost, the Exchange reviews all costs and makes determinations if there is a nexus between the expense and a regulatory function. The Exchange notes that fines collected by the Exchange in connection with a disciplinary matter offset Options Regulatory Cost.

ORF Regulatory Revenue, when combined with all of the Exchange’s other regulatory fees and fines, is designed to recover the Options Regulatory Costs to the Exchange of the supervision and regulation of member Customer options business including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities. Options Regulatory Costs include direct regulatory expenses and certain indirect expenses in support of the regulatory function. The direct expenses include in-house and third-party

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<sup>8</sup> The regulatory costs for options comprise a subset of the Exchange’s regulatory budget that is specifically related to options regulatory expenses and encompasses the cost to regulate all Members’ options activity (“Options Regulatory Cost”).

service provider costs to support the day-to-day regulatory work such as surveillance, investigations and examinations. The indirect expenses are only those expenses that are in support of the regulatory functions, such areas include Office of the General Counsel, technology, finance, and internal audit. Indirect expenses will not exceed 35% of the total Options Regulatory Costs, in which case direct expenses could be 65% or more of total Options Regulatory Costs.<sup>9</sup>

### **Proposal for January 2, 2026**

ISE has been reviewing its methodologies for the assessment and collection of ORF. As a result of this review, ISE proposes to modify its current ORF to continue to assess ORF for options transactions cleared by OCC in the Customer range, however ORF would be assessed to each ISE Member for executions that occur on ISE. Specifically, the ORF would continue to be collected by OCC on behalf of ISE from ISE Members and non-Members for all Customer transactions executed on ISE. ORF would be assessed and collected on all ultimately cleared Customer contracts, taking into account adjustments for CMTA that were provided to ISE the same day as the trade.<sup>10</sup>

Further, the Exchange would bill ORF according to the clearing instructions provided on the execution. More specifically, ISE proposes to assess ORF based on the clearing instruction provided on the execution on trade date and would not take into consideration CMTA changes or transfers that occur at OCC.<sup>11</sup> As a result of this proposed rule change, if a Member executes a Customer transaction on ISE and is the clearing member on record on the transaction on ISE, the ORF will be assessed to that

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<sup>9</sup> Direct and indirect expenses are based on the Exchange's 2025 Regulatory Budget.

<sup>10</sup> Adjustments to CMTA that occur at OCC would not be taken into account.

<sup>11</sup> Adjustments that were made the same day as the trade on ISE will be taken into account.

Member. With this proposal, in the case where a Member executes a Customer transaction on ISE and a different Member is the clearing member on record on the transaction on ISE, the ORF will be assessed to and collected from the Member who is the clearing member on record on the transaction and not the Member who executes the transaction. Additionally, in the case where a Member executes a Customer transaction on ISE and a non-ISE Member is the clearing member on record on the transaction on ISE, the ORF will be assessed to the non-ISE Member who is the clearing member on record on the transaction and not the Member who executes the transaction. With this proposal, in the case where a Member executes a Customer transaction on a non-ISE exchange, ISE will not assess an ORF, regardless of how the transaction is cleared. As is the case today, OCC will collect ORF from OCC clearing members on behalf of ISE based on ISE's instructions.

With this proposal, the current ISE ORF of \$0.0013 per contract side would be increased to \$0.0092 per contract side. With this proposal, the Exchange will endeavor to ensure that ORF Regulatory Revenue generated from ORF will not exceed 82% of Options Regulatory Cost. ISE will continue to ensure that ORF Regulatory Revenue does not exceed Options Regulatory Cost. As is the case today, the Exchange will notify Members via an Options Trader Alert of any change in the amount of the fee at least 30 calendar days prior to the effective date of the change. In this case, the Exchange will notify Members via an Options Trader Alert of these changes at least 30 calendar days prior to January 2, 2026.

The Exchange utilized historical and current data from its affiliated options exchanges to create a new regression model that would tie expenses attributable to

regulation to a respective source.<sup>12</sup> To that end, the Exchange plotted Customer volumes from each exchange<sup>13</sup> against Options Regulatory Cost from each exchange for the Time Period. Specifically, the Exchange utilized standard charting functionality to create a linear regression. The charting functionality yields a “slope” of the line, representing the marginal cost of regulation, as well as an “intercept,” representing the fixed cost of regulation.<sup>14</sup> The Exchange considered using non-linear models, but concluded that the best  $R^2$  (“R-Squared”)<sup>15</sup> results came from a standard  $y = Mx + B$  format for regulatory expense. The R-Squared for the charting method ranged from 70% to 90% historically. As noted, the plots below represent the Time Period. The X-axis reflects Customer volumes by exchange, by quarter and the Y-axis reflects regulatory expense by exchange.

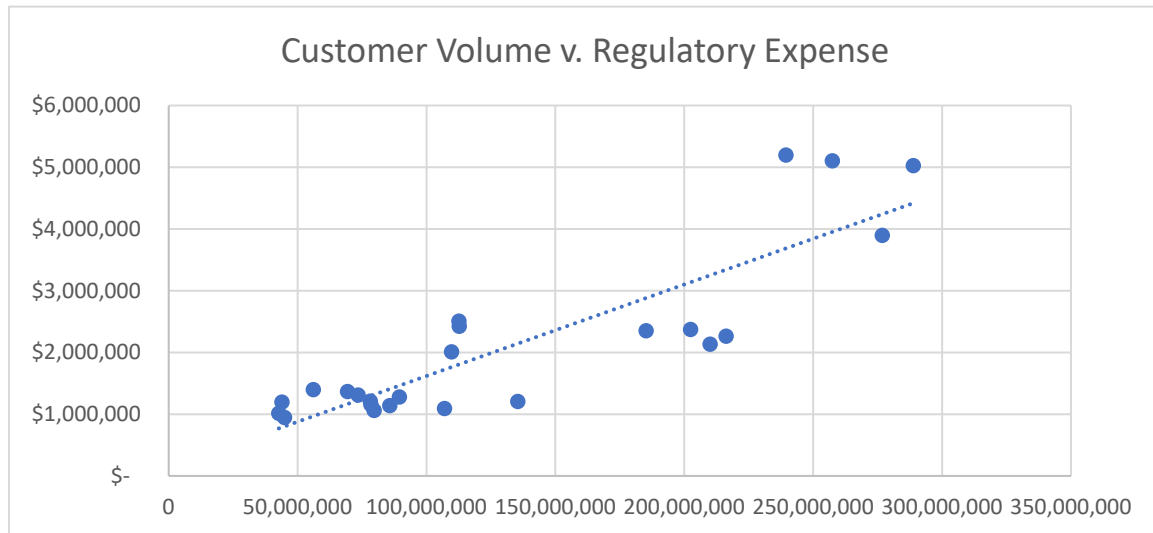
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<sup>12</sup> This model seeks to relate Options Regulatory Cost to historical volumes on each Nasdaq affiliated exchange by market participant. In creating this model, the Exchange did not rely on data from a single SRO as it had in the past.

<sup>13</sup> The Exchange utilized data from all Nasdaq affiliated options exchanges to create this model from data obtained from Q3 2024 to Q2 2025 (“Time Period”).

<sup>14</sup> The Exchange utilized data from Time Period to calculate the slope and intercept.

<sup>15</sup> R-Squared is a statistical measure that indicates how much of the variation of a dependent variable is explained by an independent variable in a regression model. The formula for calculating R-squared is:  $R^2 = 1 - \text{Unexplained Variation} / \text{Total Variation}$ .



The results of this modelling indicated a high correlation and intercept for the baseline cost of regulating the options market as a whole. Specifically, the regression model indicated that (1) the marginal cost of regulation is measurable, and significantly attributable to Customer activity; and (2) the fixed cost of setting up a regulatory regime should arguably be dispersed across the industry so that all options exchanges have substantially similar revenue streams to satisfy the “intercept” element of cost. When seeking to offset the “set-up” cost of regulation, the Exchange attempted several levels of attribution.<sup>16</sup> This led the Exchange to utilize a model with a two-factor regression on a quarterly basis (Q3 2024 to Q2 2025) of volumes relative to the pool of expense data for the six Nasdaq affiliated options exchanges. Once again, standard spreadsheet functionality (including the Data Analysis Packet) was used to determine the

<sup>16</sup> Of note, through analysis of the results of this regression model, there was no positive correlation that could be established between Customer away volume and regulatory expense. The most successful attribution was related to industry wide Firm Proprietary and Broker-Dealer Transaction volume which accounted for approximately 3-4% of the regulatory expense both on-exchange and away.

mathematics for this model.<sup>17</sup>

Utilizing the new regression model, and assumptions in the proposal, the model demonstrates that Customer volumes are directly attributable to marginal cost. Applying the regression coefficient values historically, the Exchange established a “normalization” by per options exchange. The primary driver of this need for “normalization” are negotiated regulatory contracts that were negotiated at different points in time, yielding differences in per contract regulatory costs by exchange. Normalization is therefore the average of a given exchange’s historical period (Q3 2024 to Q2 2025) ratio of regulatory expense to revenue when using the regressed values (for Customer ORF) that yields an effective rate by exchange. The “normalization” was then multiplied to a “targeted collection rate” of approximately 82% to arrive at ORF rates for Customer. Of note, when comparing the ORF rates generated from this method, historically, there appears to be a very tight relationship between the estimated modeled collection and actual expense and the regulatory expenses for that same period.

One other important aspect of this modeling is the input of Options Regulatory Costs. The Exchange notes that in defining Options Regulatory Costs it accounts for the nexus between the expense and options regulation. By way of example, the Exchange excludes certain indirect expenses such as payroll expenses, accounts receivable, accounts payable, marketing, executive level expenses and corporate systems.

The Exchange will continue to monitor ORF Regulatory Revenue to ensure that it, in combination with other regulatory fees and fines, does not exceed Options

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<sup>17</sup> The Exchange notes that various exchanges negotiate their respective contracts independently with FINRA creating some variability. Additionally, an exchange with a floor component would create some variability, although ISE does not have a floor.



Regulatory Costs. In determining whether an expense is considered an Options Regulatory Cost, the Exchange will continue to review all costs and makes determinations if there is a nexus between the expense and a regulatory function. The Exchange notes that fines collected by the Exchange in connection with a disciplinary matter will continue to offset Options Regulatory Cost.

As is the case today, ORF Regulatory Revenue is designed to recover a material portion of the Options Regulatory Costs to the Exchange for the supervision and regulation of Members' transactions, including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities. As discussed above, Options Regulatory Costs include direct regulatory expenses<sup>18</sup> and certain indirect expenses in support of the regulatory function.<sup>19</sup>

Finally, the Exchange notes that this proposal will sunset on February 1, 2026, at which point the Exchange would revert back to the ORF methodology and rate (\$0.0013 per contract side) that was in effect prior to this rule change.<sup>20</sup>

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>21</sup>

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<sup>18</sup> The direct expenses include in-house and third-party service provider costs to support the day-to-day regulatory work such as surveillances, investigations and examinations.

<sup>19</sup> The indirect expenses include support from such areas as Office of the General Counsel, technology, finance and internal audit.

<sup>20</sup> The Exchange proposes to reconsider the sunset date in 2026 and determine whether to proceed with the proposed ORF structure at that time.

<sup>21</sup> 15 U.S.C. 78f(b).

Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act<sup>22</sup>, which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its members, and other persons using its facilities. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>23</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes the proposed ORF to be assessed on January 2, 2026, is reasonable, equitable and not unfairly discriminatory for various reasons. First, the Exchange believes that continuing to assess only Customers an ORF is reasonable because Customer transactions account for a material portion of ISE's Options Regulatory Cost.<sup>24</sup> A large portion of the Options Regulatory Cost relates to Customer allocation because obtaining Customer information may be more time intensive. For example, non-Customer market participants are subject to various regulatory and reporting requirements which provides the Exchange certain data with respect to these market participants. In contrast, Customer information is known by Members of the Exchange and is not readily available to ISE.<sup>25</sup> The Exchange may have to take

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<sup>22</sup> 15 U.S.C. 78f(b)(4).

<sup>23</sup> 15 U.S.C. 78f(b)(5).

<sup>24</sup> The Exchange notes that the regulatory costs relating to monitoring Members with respect to Customer trading activity are generally higher than the regulatory costs associated with Members that do not engage in customer trading activity, which tends to be more automated and less labor-intensive. By contrast, regulating Members that engage in Customer trading activity is generally more labor intensive and requires a greater expenditure of human and technical resources as the Exchange needs to review not only the trading activity on behalf of Customers, but also the Member's relationship with its Customers via more labor-intensive exam-based programs. As a result, the costs associated with administering the Customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-Customer component of the regulatory program.

<sup>25</sup> The Know Your Customer or "KYC" provision is the obligation of the broker-dealer.

additional steps to understand the facts surrounding particular trades involving a Customer which may require requesting such information from a broker-dealer. Further, Customers require more Exchange regulatory services based on the amount of options business they conduct. For example, there are Options Regulatory Costs associated with main office and branch office examinations (e.g., staff expenses), as well as investigations into Customer complaints and the terminations of registered persons. As a result, the Options Regulatory Costs associated with administering the Customer component of the Exchange's overall regulatory program are materially higher than the Options Regulatory Costs associated with administering the non-Customer component when coupled with the amount of volume attributed to such Customer transactions. Utilizing the new regression model, and assumptions in the proposal, it appears that ISE's Customer regulation occurs to a large extent on Exchange. Utilizing the new regression model, and assumptions in the proposal, the Exchange does not believe that significant Options Regulatory Costs result from activity attributed to Customers that may occur across options markets. To that end, with this proposal, the amount of Options Regulatory Cost allocated to on-exchange Customer transactions is significant. Also, with respect to Customer transactions, options volume continues to surpass volume from other options participants. Additionally, there are rules in the Exchange's Rulebook that deal exclusively with Customer transactions, such as rules involving doing business with a Customer, which would not apply to Firm Proprietary and Broker-Dealer

Transactions.<sup>26</sup> For these reasons, regulating Customer trading activity is “much more labor-intensive” and therefore, more costly.

Second, while the Exchange acknowledges that there is a cost to regulate Market Makers, unlike other market participants, Market Makers have various regulatory requirements with respect to quoting as provided for in Options 2, Section 4. Specifically, Market Makers have certain quoting requirements with respect to their assigned options series as provided in Options 2, Section 5. Primary Market Makers are obligated to quote in the Opening Process and intra-day.<sup>27</sup> Additionally, Market Makers may enter quotes in the Opening Process to open an option series and they are required to quote intra-day.<sup>28</sup> Further, unlike other market participants, Primary Market Makers and Market Makers have obligations to compete with other Market Makers to improve the market in all series of options classes to which the Market Maker is appointed and to update market quotations in response to changed market conditions in all series of options classes to which the Market Maker is appointed.<sup>29</sup> Also, Primary Market Makers and Market Makers incur other costs imposed by the Exchange related to their quoting obligations in addition to other fees paid by other market participants. Market Makers are subject to a number of fees, unlike other market participants. Primary Market Makers and Competitive Market Makers pay Access Fees<sup>30</sup> in addition to other fees paid by other market participants. These liquidity providers are critical market participants in that they

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<sup>26</sup> See ISE Options 10 Rules.

<sup>27</sup> See ISE Options 3, Section 8 and Options 2, Section 5.

<sup>28</sup> Id.

<sup>29</sup> See ISE Options 2, Section 4(b)(1) and (3).

<sup>30</sup> See ISE Options 7, Section 8A.

are the only market participants that are required to provide liquidity to ISE and are necessary for opening the market. Excluding Market Maker transactions from ORF allows these market participants to manage their costs and consequently their business model more effectively thus enabling them to better allocate resources to other technologies that are necessary to manage risk and capacity to ensure that these market participants continue to compete effectively on ISE in providing tight displayed quotes which in turn benefits markets generally and market participants specifically. Permitting these market participants to utilize their resources to quote tighter in the market. Tighter quotes benefits Customers as well as other market participants who interact with that liquidity. Finally, the Exchange notes that Market Makers may transact orders in addition to submitting quotes on the Exchange. This proposal would except orders submitted by Market Makers, in addition to quotes, for purposes of ORF. Market Makers utilize orders in their assigned options series to sweep the order book. The Exchange believes the quantity of orders utilized by Market Makers in their assigned series is de minimis. In their unassigned options series, Market Makers utilize orders to hedge their risk or respond to auctions. The Exchange notes that the number of orders submitted by Market Makers in their unassigned options series are far below the cap<sup>31</sup> and therefore de minimis.

Additionally, while the Exchange acknowledges that there is a cost to regulate Firm Proprietary and Broker-Dealer transactions, the Exchange notes that these market participants do not entail significant volume when compared to Customer transactions.

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<sup>31</sup> See ISE Options 2, Section 6. The total number of contracts executed during a quarter by a Market Maker in options classes to which it is not appointed may not exceed twenty-five percent (25%) of the total number of contracts traded. In the Exchange's experience, Market Maker's are generally below the 25% cap.

The Exchange notes that Firm Proprietary and Broker-Dealer market participants are more sophisticated. There are not the same protections in place for Firm Proprietary and Broker-Dealer Transactions as compared to Customer transactions. The regulation of Firm Proprietary and Broker-Dealer transactions is less resource intensive than the regulation of Customer transactions and accounts for a small percentage of Options Regulatory Costs.

Third, assessing ORF on Customer executions that occur on ISE is reasonable, equitable and not unfairly discriminatory because it will avoid overlapping ORFs that would otherwise be assessed by ISE and other options exchanges that also assess an ORF. With this proposal, Customers executions that occur on other exchanges would no longer be subject to an ISE ORF. Further, the Exchange believes that collecting 82% of Options Regulatory Cost is appropriate and correlates to the degree of regulatory responsibility and Options Regulatory Cost borne by the Exchange with respect to Customer transactions. The Exchange's proposal continues to ensure that Options Regulatory Revenue, in combination with other regulatory fees and fines, does not exceed Options Regulatory Costs. Fines collected by the Exchange in connection with a disciplinary matter will continue to offset Options Regulatory Cost. Capping ORF collected at 82% of Options Regulatory Cost, commencing January 2, 2026, is reasonable, equitable and not unfairly discriminatory as the Options Regulatory Revenue collected will offset the corresponding Options Regulatory Cost associated with on-exchange Customer transactions. The Exchange will review the ORF Regulatory Revenue and would amend the ORF if it finds that its ORF Regulatory Revenue exceeds

its projections.<sup>32</sup>

The proposed sunset date of February 1, 2026 is reasonable, equitable and not unfairly discriminatory. If all options exchanges have adopted a similar ORF model, the Exchange notes that it would not sunset the proposal on February 1, 2026. The Exchange proposes to reconsider the sunset date in early 2026 and determine whether to proceed with the proposed ORF structure at that time.

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 intra-market competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed changes to ORF do not impose an undue burden on inter-market competition because ORF is a regulatory fee that supports regulation in furtherance of the purposes of the Act. The Exchange notes, however, the proposed change is not designed to address any competitive issues. The Exchange is obligated to ensure that the amount of ORF Regulatory Revenue, in combination with its other regulatory fees and fines, does not exceed ORF Regulatory Cost.

Continuing to assess ORF only on Customer executions that occur on ISE does not impose an undue burden on intra-market competition. Customer transactions account for a large portion of the Exchange's surveillance expense. With respect to Customer transactions, options volume continues to surpass volume from other options participants. Additionally, there are rules in the Exchange's Rulebook that deal exclusively with Customer transactions, such as rules involving doing business with a Customer, which

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<sup>32</sup> ISE would submit a rule change to the Commission to amend ORF rates.

would not apply to Non-Customer transactions.<sup>33</sup> For these reasons, regulating Customer trading activity is “much more labor-intensive” and therefore, more costly. Further, the Exchange believes that a large portion of the Options Regulatory Cost relates to Customer allocation because obtaining Customer information may be more time intensive. For example, non-Customer market participants are subject to various regulatory and reporting requirements which provides the Exchange certain data with respect to these market participants. In contrast, Customer information is known by Members of the Exchange and is not readily available to ISE.<sup>34</sup> The Exchange may have to take additional steps to understand the facts surrounding particular trades involving a Customer which may require requesting such information from a broker-dealer. Further, Customers require more Exchange regulatory services based on the amount of options business they conduct. For example, there are Options Regulatory Costs associated with main office and branch office examinations (e.g., staff expenses), as well as investigations into Customer complaints and the terminations of registered persons. As a result, the Options Regulatory Costs associated with administering the Customer component of the Exchange’s overall regulatory program are materially higher than the Options Regulatory Costs associated with administering the non-Customer component when coupled with the amount of volume attributed to such Customer transactions. Not attributing significant Options Regulatory Costs to Customers for activity that may occur across options markets does not impose an undue burden on intra-market competition

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<sup>33</sup> See ISE Options 10 Rules.

<sup>34</sup> The Know Your Customer or “KYC” provision is the obligation of the broker-dealer.



because the data in the regression model demonstrates that ISE's Customer regulation occurs to a large extent on Exchange.

The Exchange believes that not assessing ORF on Market Makers does not impose an undue burden on intra-market competition because these liquidity providers are critical market participants in that they are the only market participants that are required to provide liquidity to ISE and are necessary for opening the market. Excluding Market Maker transactions from ORF does not impose an intra-market burden on competition, rather it allows these market participants to manage their costs and consequently their business model more effectively thus enabling them to better allocate resources to other technologies that are necessary to manage risk and capacity to ensure that these market participants continue to compete effectively on ISE in providing tight displayed quotes which in turn benefits markets generally and market participants specifically. Unlike other market participants, Market Makers have various regulatory requirements with respect to quoting as provided for in Options 2, Section 4.

Specifically, Market Makers have certain quoting requirements with respect to their assigned options series as provided in Options 2, Section 5. Primary Market Makers are obligated to quote in the Opening Process and intra-day.<sup>35</sup> Additionally, Market Makers may enter quotes in the Opening Process to open an option series and they are required to quote intra-day.<sup>36</sup> Further, unlike other market participants, Primary Market Makers and Market Makers have obligations to compete with other Market Makers to improve the market in all series of options classes to which the Market Maker is appointed and to

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<sup>35</sup> See ISE Options 3, Section 8 and Options 2, Section 5.

<sup>36</sup> Id.

update market quotations in response to changed market conditions in all series of options classes to which the Market Maker is appointed.<sup>37</sup> Primary Market Makers and Market Makers incur other costs imposed by the Exchange related to their quoting obligations in addition to other fees paid by other market participants. Market Makers are subject to a number of fees, unlike other market participants. Primary Market Makers and Competitive Market Makers pay Access Fees<sup>38</sup> in addition to other fees paid by other market participants. Finally, the Exchange notes that Market Makers may transact orders on the Exchange in addition to submitting quotes. The Exchange's proposal to except orders submitted by Market Makers, in addition to quotes, for purposes of ORF does not impose an undue burden on intra-market competition because Market Makers utilize orders in their assigned options series to sweep the order book. Further, the Exchange believes the quantity of orders utilized by Market Makers in their assigned series is de minimis. In their unassigned options series, Market Makers utilize orders to hedge their risk or respond to auctions. The Exchange notes that the number of orders submitted by Market Makers in their unassigned options series are far below the cap<sup>39</sup> and therefore de minimis.

The Exchange believes that not assessing ORF on Firm Proprietary and Broker-Dealer market participants does not impose an undue burden on intra-market competition

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<sup>37</sup> See ISE Options 2, Section 4(b)(1) and (3).

<sup>38</sup> See ISE Options 7, Section 8A.

<sup>39</sup> See ISE Options 2, Section 6(b)(1) and (2). The total number of contracts executed during a quarter by a Competitive Market Maker in options classes to which it is not appointed may not exceed twenty-five percent (25%) of the total number of contracts traded by such Competitive Market Maker in classes to which it is appointed and with respect to which it was quoting pursuant to Options 2, Section 5(e)(1). The total number of contracts executed during a quarter by a Primary Market Maker in options classes to which it is not appointed may not exceed twenty-five percent (25%) of the total number of contracts traded per each Primary Market Maker Membership.

because the regulation of Firm Proprietary and Broker-Dealer transactions is less resource intensive than the regulation of Customer transactions. The volume generated from Firm Proprietary and Broker-Dealer transactions does not entail significant volume when compared to Customer transactions. Therefore, excluding Firm Proprietary and Broker-Dealer transactions from ORF does not impose an undue burden on intra-market competition as Customer transactions account for a material portion of ISE's Options Regulatory Cost.<sup>40</sup>

The Exchange's proposal to assess ORF only on Customer executions that occur on ISE does not impose an intra-market burden on competition because the amount of activity surveilled across exchanges is small when compared to the overall number of Exchange rules that are surveilled by ISE for on-Exchange activity. Limiting the amount of ORF assessed to activity that occurs on ISE avoids overlapping ORFs that would otherwise be assessed by ISE and other options exchanges that also assess an ORF. Further, capping ORF collected at 82% of Options Regulatory Cost commencing January 2, 2026, does not impose an intra-market burden on competition as this collection accounts for the collection only on Customer executions. The Exchange will review the ORF Regulatory Revenue and would amend the ORF if it finds that its ORF Regulatory

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<sup>40</sup> The Exchange notes that the regulatory costs relating to monitoring Members with respect to customer trading activity are generally higher than the regulatory costs associated with Members that do not engage in customer trading activity, which tends to be more automated and less labor-intensive. By contrast, regulating Members that engage in customer trading activity is generally more labor intensive and requires a greater expenditure of human and technical resources as the Exchange needs to review not only the trading activity on behalf of customers, but also the Member's relationship with its customers via more labor-intensive exam-based programs. As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-customer component of the regulatory program.

Revenue exceeds its projections.<sup>41</sup>

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

No written comments were either solicited or received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.<sup>42</sup> At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the 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](mailto:rule-comments@sec.gov). Please include file number SR-ISE-2025-20 on the subject line.

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<sup>41</sup> ISE would submit a rule change to the Commission to amend ORF rates.

<sup>42</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

Paper Comments:

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

All submissions should refer to file number SR-ISE-2025-20. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-ISE-2025-20 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.<sup>43</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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<sup>43</sup> 17 CFR 200.30-3(a)(12).

**EXHIBIT 5**

*New text is underlined; deleted text is in brackets.*

**Nasdaq ISE, LLC Rules**

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**Options Rules**

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**Options 7 Pricing Schedule**

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**Section 9. Legal & Regulatory**

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**C. Options Regulatory Fee**

**As of August 1, 2023, the ORF is \$0.0013 per contract side.**

The Options Regulatory Fee (“ORF”) is assessed by ISE to each ISE Member for options transactions cleared by The Options Clearing Corporation (“OCC”) in the customer range where: (1) the execution occurs on ISE or (2) the execution occurs on another exchange and is cleared by an ISE Member. The ORF is collected by OCC on behalf of ISE from (1) ISE clearing members for all customer transactions they clear or (2) non-members for all customer transactions they clear that were executed on ISE. ISE uses reports from OCC when assessing and collecting ORF. The Exchange will notify Members via an Options Trader Alert of any change in the amount of the fee at least 30 calendar days prior to the effective date of the change.

**Effective January 2, 2026, the ORF is \$0.0092 per contract side**

The Options Regulatory Fee (“ORF”) is assessed by ISE for options transactions cleared by The Options Clearing Corporation (“OCC”) in the customer range for executions that occur on ISE. Specifically, the ORF is collected by OCC on behalf of ISE from ISE Members and non-Members for all customer transactions executed on ISE. The Exchange will notify Members via an Options Trader Alert of any change in the amount of the fee at least 30 calendar days prior to the effective date of the change.

The ORF will sunset on February 1, 2026 at which point the Exchange would revert back to the prior ORF methodology and rate of \$0.0013 per contract side.

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