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Page 1 of * 20

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

File No. * SR 2025 - * 39

Amendment No. (req. for Amendments *)

Filing by Nasdaq ISE, LLC

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

Initial *

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Amendment *

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Withdrawal

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Section 19(b)(2) *

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Section 19(b)(3)(A) *

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Section 19(b)(3)(B) *

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Pilot

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Extension of Time Period for
Commission Action *

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Date Expires *

Rule

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19b-4(f)(1)

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19b-4(f)(4)

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19b-4(f)(2)

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19b-4(f)(5)

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19b-4(f)(3)

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19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Section 806(e)(1) *

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Section 806(e)(2) *

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Security-Based Swap Submission pursuant to the
Securities Exchange Act of 1934

Section 3C(b)(2) *

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Exhibit 2 Sent As Paper Document

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Exhibit 3 Sent As Paper Document

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Description

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

Proposal to Amend FLEX Order Fees

Contact Information

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

First Name *

Last Name *

Title *

E-mail *

Telephone *

Fax

Signature

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

Date

12/10/2025

(Title *)

By

John A. Zecca

(Name *)

EVP and Chief Legal Officer

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



Date: 2025.12.10
16:16:55 -05'00'

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

Add Remove View

SR-ISE-2025-39 19b-4.docx

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

Exhibit 1 - Notice of Proposed Rule Change *

Add Remove View

SR-ISE-2025-39 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.

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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

Add Remove View

SR-ISE-2025-39 Exhibit 5 .docx

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

Partial Amendment

Add Remove View

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

1. Text of the Proposed Rule Change

(a) Nasdaq ISE, LLC (“ISE” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to amend its Pricing Schedule at Options 7, Section 6, D., FLEX Order Fees.³

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.



¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ On December 1, 2025 the Exchange filed SR-ISE-2025-37. On December 12, 2025, the Exchange withdrew SR-ISE-2025-37 and filed this proposal.

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 Pricing Schedule at Options 7, Section 6, D., FLEX Order Fees, to decrease the FLEX⁴ Order Fees for a FLEX Price Improvement Auction (“FLEX PIM”),⁵ or a FLEX Solicited Order Mechanism (“FLEX SOM”).⁶

FLEX Order Fees

The Exchange proposes to amend Options 7, Section 6, D., FLEX Order Fees. Today, a Member may electronically submit a FLEX Order into an electronic FLEX Auction pursuant to Options 3A, Section 11(b). Today, for the FLEX Auction, the Exchange assesses \$0.10 per contract for Market Makers,⁷ Non-Nasdaq ISE Market

⁴ FLEX Options are designed to meet the needs of market participants for greater flexibility in selecting the terms of options within the parameters of the Exchange’s rules. Options 3A Rules govern FLEX.

⁵ The FLEX PIM is a paired auction mechanism pursuant to Options 3A, Section 12 through which an Exchange member may electronically submit for execution an order (which may be a simple or complex order) it represents as agent (“Agency Order”) against principal interest or a solicited order(s) (except, if the Agency Order is a simple order, for an order for the account of any FLEX Market Maker with an appointment in the applicable FLEX Option class on the Exchange) (an “Initiating Order”), provided it submits the Agency Order for electronic execution into a FLEX PIM Auction pursuant to Options 3A, Section 12.

⁶ The FLEX SOM is a paired auction mechanism pursuant to Options 3A, Section 13 through which an Exchange member (the “Initiating Member”) may electronically submit for execution an order (which may be a simple or complex order) it represents as agent (“Agency Order”) against a solicited order (“Solicited Order”) if it submits the Agency Order for electronic execution into a FLEX SOM Auction pursuant to Options 3A, Section 13.

⁷ The term “Market Makers” refers to “Competitive Market Makers” and “Primary Market Makers” collectively. See Options 1, Section 1(a)(21).

Makers (FarMM),⁸ Firm Proprietary⁹ / Broker Dealers,¹⁰ and Professional Customers.¹¹

The Exchange assesses no Fees for FLEX Auctions to Priority Customers.¹²

Today, a Member may also electronically submit a FLEX Order into a FLEX PIM and FLEX SOM pursuant to Options 3A, Section 12 and Options 3A, Section 13, respectively. For the FLEX PIM and FLEX SOM, today, the Exchange assesses \$0.07 per contract for Market Makers, Non-Nasdaq ISE Market Makers (FarMM), Firm Proprietary / Broker Dealers, and Professional Customers. The Exchange assesses no FLEX Order Fees for FLEX PIM and FLEX SOM to Priority Customers.

Finally, today, any Member other than an Initiating Member may submit responses to a FLEX PIM and FLEX SOM pursuant to Options 3A, Section 12(c)(5) and Options 3A, Section 13(c)(5), respectively. For responses to a FLEX PIM and FLEX SOM, today, the Exchange assesses \$0.50 per contract for Market Makers, Non-Nasdaq ISE Market Makers (FarMM), Firm Proprietary / Broker Dealers, Professional Customers, and Priority Customers.

⁸ A “Non-Nasdaq ISE Market Maker” is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934, as amended, registered in the same options class on another options exchange. See Options 7, Section 1(c).

⁹ A “Firm Proprietary” order is an order submitted by a member for its own proprietary account. See Options 7, Section 1(c).

¹⁰ A “Broker-Dealer” order is an order submitted by a member for a broker-dealer account that is not its own proprietary account. See Options 7, Section 1(c).

¹¹ A “Professional Customer” is a person or entity that is not a broker/dealer and is not a Priority Customer. See Options 7, Section 1(c).

¹² A “Priority Customer” is a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s), as defined in Nasdaq ISE Options 1, Section 1(a)(38). Unless otherwise noted, when used in this Pricing Schedule the term “Priority Customer” includes “Retail.” A “Retail” order is a Priority Customer order that originates from a natural person, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. See Options 7, Section 1(c).

At this time, the Exchange proposes to decrease Non-Priority Customer Fees for FLEX PIM and FLEX SOM from \$0.07 to \$0.06 per contract. The Exchange believes that this decrease will incentivize greater activity in FLEX PIM and FLEX SOM for potential price improvement.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹³ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁴ in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(4) and (5).

exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'”¹⁵

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”¹⁶

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

FLEX Order Fees

The Exchange’s proposal to decrease Non-Priority Customer Fees for FLEX PIM and FLEX SOM from \$0.07 to \$0.06 per contract is reasonable because the fee reduction

¹⁵ NetCoalition v. SEC, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

¹⁶ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

will incentivize greater activity in FLEX PIM and FLEX SOM for potential price improvement. Further, as proposed, the fees are competitive with market dynamics and consider the price improvement opportunities of the order mechanisms. Priority Customers will continue to be assessed no Fee for FLEX PIM and FLEX SOM.

The Exchange's proposal to decrease Non-Priority Customer Fees for FLEX PIM and FLEX SOM from \$0.07 to \$0.06 per contract is equitable and not unfairly discriminatory. The Fees for FLEX PIM and SOM will apply in a like manner to all Non-Priority Customers. Priority Customers will continue to be assessed no Fees for FLEX PIM and FLEX SOM. The Exchange believes that it is equitable and not unfairly discriminatory to assess more favorable pricing for Priority Customers. Priority Customer order flow enhances liquidity on the Exchange to the benefit of all market participants by providing more trading opportunities, which in turn attracts Market Makers and other market participants who may interact with this order flow.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of intra-market competition, the Exchange does not believe that its proposal will place any category of market participant at a competitive disadvantage.

FLEX Order Fees

The proposed Fees for FLEX PIM and FLEX SOM do not impose an undue burden on competition because the Exchange will apply the same fees to all Non-Priority Customers. Priority Customers will continue to be assessed no Fees for FLEX PIM and FLEX SOM. The Exchange believes that it does not impose an undue burden on competition to assess more favorable pricing for Priority Customers. Priority Customer

order flow enhances liquidity on the Exchange to the benefit of all market participants by providing more trading opportunities, which in turn attracts Market Makers and other market participants who may interact with this order flow. Nasdaq does not believe that the proposed fee changes place an unnecessary burden on competition.

In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

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

No written comments were either solicited or received.

6. Extension of Time Period for Commission Action

Not applicable.

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

Pursuant to Section 19(b)(3)(A)(ii) of the Act,¹⁷ the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

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

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

Not applicable.

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

Not applicable.

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.

¹⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

EXHIBIT 1**SECURITIES AND EXCHANGE COMMISSION****[Release No. 34- ; File No. SR-ISE-2025-39]****Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend FLEX Order Fees**

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹, and Rule 19b-4 thereunder,² notice is hereby given that on December 10, 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 its Pricing Schedule at Options 7, Section 6, D., FLEX Order Fees.³

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ On December 1, 2025 the Exchange filed SR-ISE-2025-37. On December 12, 2025, the Exchange withdrew SR-ISE-2025-37 and filed this proposal.

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 Pricing Schedule at Options 7, Section 6, D., FLEX Order Fees, to decrease the FLEX⁴ Order Fees for a FLEX Price Improvement Auction ("FLEX PIM"),⁵ or a FLEX Solicited Order Mechanism ("FLEX SOM").⁶

FLEX Order Fees

The Exchange proposes to amend Options 7, Section 6, D., FLEX Order Fees. Today, a Member may electronically submit a FLEX Order into an electronic FLEX Auction pursuant to Options 3A, Section 11(b). Today, for the FLEX Auction, the Exchange assesses \$0.10 per

⁴ FLEX Options are designed to meet the needs of market participants for greater flexibility in selecting the terms of options within the parameters of the Exchange's rules. Options 3A Rules govern FLEX.

⁵ The FLEX PIM is a paired auction mechanism pursuant to Options 3A, Section 12 through which an Exchange member may electronically submit for execution an order (which may be a simple or complex order) it represents as agent ("Agency Order") against principal interest or a solicited order(s) (except, if the Agency Order is a simple order, for an order for the account of any FLEX Market Maker with an appointment in the applicable FLEX Option class on the Exchange) (an "Initiating Order"), provided it submits the Agency Order for electronic execution into a FLEX PIM Auction pursuant to Options 3A, Section 12.

⁶ The FLEX SOM is a paired auction mechanism pursuant to Options 3A, Section 13 through which an Exchange member (the "Initiating Member") may electronically submit for execution an order (which may be a simple or complex order) it represents as agent ("Agency Order") against a solicited order ("Solicited Order") if it submits the Agency Order for electronic execution into a FLEX SOM Auction pursuant to Options 3A, Section 13.

contract for Market Makers,⁷ Non-Nasdaq ISE Market Makers (FarMM),⁸ Firm Proprietary⁹ / Broker Dealers,¹⁰ and Professional Customers.¹¹ The Exchange assesses no Fees for FLEX Auctions to Priority Customers.¹²

Today, a Member may also electronically submit a FLEX Order into a FLEX PIM and FLEX SOM pursuant to Options 3A, Section 12 and Options 3A, Section 13, respectively. For the FLEX PIM and FLEX SOM, today, the Exchange assesses \$0.07 per contract for Market Makers, Non-Nasdaq ISE Market Makers (FarMM), Firm Proprietary / Broker Dealers, and Professional Customers. The Exchange assesses no FLEX Order Fees for FLEX PIM and FLEX SOM to Priority Customers.

Finally, today, any Member other than an Initiating Member may submit responses to a FLEX PIM and FLEX SOM pursuant to Options 3A, Section 12(c)(5) and Options 3A, Section 13(c)(5), respectively. For responses to a FLEX PIM and FLEX SOM, today, the Exchange assesses \$0.50 per contract for Market Makers, Non-Nasdaq ISE Market Makers (FarMM), Firm Proprietary / Broker Dealers, Professional Customers, and Priority Customers.

⁷ The term “Market Makers” refers to “Competitive Market Makers” and “Primary Market Makers” collectively. See Options 1, Section 1(a)(21).

⁸ A “Non-Nasdaq ISE Market Maker” is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934, as amended, registered in the same options class on another options exchange. See Options 7, Section 1(c).

⁹ A “Firm Proprietary” order is an order submitted by a member for its own proprietary account. See Options 7, Section 1(c).

¹⁰ A “Broker-Dealer” order is an order submitted by a member for a broker-dealer account that is not its own proprietary account. See Options 7, Section 1(c).

¹¹ A “Professional Customer” is a person or entity that is not a broker/dealer and is not a Priority Customer. See Options 7, Section 1(c).

¹² A “Priority Customer” is a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s), as defined in Nasdaq ISE Options 1, Section 1(a)(38). Unless otherwise noted, when used in this Pricing Schedule the term “Priority Customer” includes “Retail.” A “Retail” order is a Priority Customer order that originates from a natural person, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. See Options 7, Section 1(c).

At this time, the Exchange proposes to decrease Non-Priority Customer Fees for FLEX PIM and FLEX SOM from \$0.07 to \$0.06 per contract. The Exchange believes that this decrease will incentivize greater activity in FLEX PIM and FLEX SOM for potential price improvement.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹³ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁴ in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(4) and (5).

possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’”¹⁵

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”¹⁶

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

FLEX Order Fees

The Exchange’s proposal to decrease Non-Priority Customer Fees for FLEX PIM and FLEX SOM from \$0.07 to \$0.06 per contract is reasonable because the fee reduction will incentivize greater activity in FLEX PIM and FLEX SOM for potential price improvement.

¹⁵ NetCoalition v. SEC, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

¹⁶ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

Further, as proposed, the fees are competitive with market dynamics and consider the price improvement opportunities of the order mechanisms. Priority Customers will continue to be assessed no Fee for FLEX PIM and FLEX SOM.

The Exchange's proposal to decrease Non-Priority Customer Fees for FLEX PIM and FLEX SOM from \$0.07 to \$0.06 per contract is equitable and not unfairly discriminatory. The Fees for FLEX PIM and SOM will apply in a like manner to all Non-Priority Customers. Priority Customers will continue to be assessed no Fees for FLEX PIM and FLEX SOM. The Exchange believes that it is equitable and not unfairly discriminatory to assess more favorable pricing for Priority Customers. Priority Customer order flow enhances liquidity on the Exchange to the benefit of all market participants by providing more trading opportunities, which in turn attracts Market Makers and other market participants who may interact with this order flow.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of intra-market competition, the Exchange does not believe that its proposal will place any category of market participant at a competitive disadvantage.

FLEX Order Fees

The proposed Fees for FLEX PIM and FLEX SOM do not impose an undue burden on competition because the Exchange will apply the same fees to all Non-Priority Customers. Priority Customers will continue to be assessed no Fees for FLEX PIM and FLEX SOM. The Exchange believes that it does not impose an undue burden on competition to assess more favorable pricing for Priority Customers. Priority Customer order flow enhances liquidity on the Exchange to the benefit of all market participants by providing more trading opportunities, which

in turn attracts Market Makers and other market participants who may interact with this order flow. Nasdaq does not believe that the proposed fee changes place an unnecessary burden on competition.

In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

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

No written comments were either solicited or received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.¹⁷ 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

¹⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-ISE-2025-39 on the subject line.

Paper Comments:

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

All submissions should refer to file number SR-ISE-2025-39. 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 filing 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-2025-39 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.¹⁸

Sherry R. Haywood,

Assistant Secretary.

¹⁸ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

New text is underlined; deleted text is in brackets.

Nasdaq ISE, LLC Rules

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Options Rules

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Options 7 Pricing Schedule

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Section 6. Other Options Fees and Rebates

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D. FLEX Order Fees⁽¹⁾

Market Participant	Fee for FLEX Auctions	Fee for FLEX PIM and SOM⁽²⁾	Fee for Responses to FLEX PIM and SOM Orders
Market Maker	\$0.10	\$0. <u>[07]06</u>	\$0.50
Non-Nasdaq ISE Market Maker (FarMM)	\$0.10	\$0. <u>[07]06</u>	\$0.50
Firm Proprietary / Broker- Dealer	\$0.10	\$0. <u>[07]06</u>	\$0.50
Professional Customer	\$0.10	\$0. <u>[07]06</u>	\$0.50
Priority Customer	\$0.00	\$0.00	\$0.50

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

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

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