September 11, 2015

Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-0609

Re: File No. SR-NASDAQ-2015-102

Dear Mr. Fields:

The International Securities Exchange, LLC ("ISE") appreciates the opportunity to comment on the above-referenced rule filing in which the NASDAQ Options Market ("NOM") proposes to increase maker rebates in penny classes to up to $0.53 per contract for customer orders,[1] and increase taker fees in penny classes other than SPY to up to $0.54 per contract for non-customer orders, subject to applicable discounts. The proposed changes continue a worrying trend of options exchanges setting fees and rebates at levels that exceed half of one minimum trading increment. ISE previously addressed this issue in a comment letter submitted to the U.S. Securities and Exchange Commission ("Commission") last December.[2] We continue to believe that such fees are anticompetitive, and urge the Commission to suspend NOM's proposed fee change and initiate disapproval proceedings.

The issue of options fees that exceed half of one minimum trading increment has been on the Commission's radar since at least April 2010, when the Commission proposed to adopt a $0.30 per contract cap on access fees for options to eliminate the potential of uncapped fees to interfere with access to displayed quotes.[3] This past December, ISE filed a comment letter requesting that the Commission disapprove several fee changes filed by the MIAX Options Exchange ("MIAX") that exceeded half of one minimum trading increment.[4] In the past, even though there was no formal rule capping fees in options markets,

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[1] This includes a Tier 8 rebate of $0.48 per contract and a supplemental rebate increased to $0.05 per contract.

[2] See letter from Michael J. Simon, Secretary and General Counsel, International Securities Exchange, LLC to Brent J. Fields, Secretary, Commission, dated December 19, 2014.

[3] See Securities Exchange Act Release No. 61902 (April 14, 2010), 75 FR 20738 (April 20, 2010) (S7-09-10) ("access fee proposal"). At that time the Commission stated that "because of the requirements for intermarket price protection, competitive forces, by themselves, are not, and will not be, enough to prevent fees from being charged that interfere with fair and efficient access to an options exchange's displayed prices." Id at 20742-43.

[4] See supra note 2. The discussion in that letter is incorporated by reference here.

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Commission staff raised significant objections to filings that introduced fees in penny classes that were more than half of one trading increment, or the equivalent of $0.50 per contract for a standard option contract that overlies 100 shares.[5] This policy has been slowly eroded in recent years, and we urge the Commission to reassert it now before these anticompetitive fees become too entrenched to change.[6] As more exchanges offer fees and rebates that exceed this threshold, members and investors will be forced with increasing frequency to execute orders at prices that do not reflect the best all-in prices available in the market. This is the concern that moved the Commission in 2010 to propose to cap access fees in options. While that concern was merely theoretical in 2010, it is quite real today. Options exchanges have increasingly started to escalate fees and rebates past the half tick mark, meaning that market participants could be forced to execute orders at the national best bid or offer ("NBBO") even though the NBBO does not reflect the best all-in price net of fees. To illustrate the problem, consider a market maker on the BATS Options Market ("BATS") that executes sufficient volume to be entitled to a $0.51 per contract rebate.[7] If the price of an option contract was just one cent better on NOM, that market maker could be forced to route its order there, where it would instead be charged a fee of up to $0.54 per contract. While NOM's "best price" would result in a savings of $1.00 per contract,[8] the difference in fees would result in a loss of $1.05 per contract, more than eroding the savings based on displayed prices.

ISE strongly believes that members should not be compelled to execute orders at all-in prices that do not reflect the best overall prices in the market. We thus respectfully ask the Commission to suspend the above-referenced proposed rule change and initiate disapproval proceedings. In doing so, ISE believes that the Commission would provide much needed guidance to all options exchanges.

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We thank the Commission for the opportunity to comment on these proposed rule filings. If you have any additional questions, or if we can be of further assistance in this matter, please do not hesitate to contact us.

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[5] Section 6(b)(4) of the Securities Exchange Act of 1934 gives the Commission authority to determine that proposed exchange fees are designed to "provide for the equitable allocation of reasonable dues, fees, and other charges." 15 U.S.C. 78f(b)(4).

[6] While the Commission did not ultimately heed the comments we submitted on the MIAX filings, we believe that is vital that this issue be addressed now before these fees establish precedent that is difficult to reverse

[7] This $0.51 per contract rebate includes a Tier 4 rebate of $0.47 per contract plus a Tier 2 quoting incentive program rebate of $0.04 per contract. BATS market makers may also qualify for a NBBO setter rebate of up to $0.04 per contract for establishing a new NBBO.

[8] $0.01 multiplied by a 100 share deliverable for a standard options contract.

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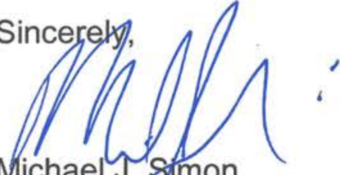
Sincerely,



Michael J. Simon,
Secretary and General Counsel