

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-90501; File No. SR-ISE-2020-39)

November 24, 2020

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to an Amendment to Options 7, Section 4, Related to Complex Orders Fees and Rebates, and Options 7, Section 9

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 November 13, 2020, 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 and II 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 Options 7, Section 4, “Complex Order Fees and Rebates,” and Options 7, Section 9, “Legal & Regulatory.”

The Exchange originally filed the proposed pricing change on November 2, 2020 (SR-ISE-2020-37). On November 12, 2020, the Exchange withdrew that filing and is submitting this replacement filing on November 13, 2020.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange proposes to amend Options 7, Section 4, “Complex Order Fees and Rebates,” and Options 7, Section 9, “Legal & Regulatory.” Each change will be described below.

Options 7, Section 4

Priority Customer Rebates for Complex Orders

The Exchange’s proposal to amend Options 7, Section 4, “Complex Order Fees and Rebates” is intended to offer Members an ability to earn higher Priority Customer Complex Order rebates. Specifically, the Exchange proposes to amend Priority Customer Complex Order Tiers 8 and 9 and add a new Tier 10. Today, the Exchange pays rebates to Priority Customers pursuant to the below tier schedule.

**Priority
Customer
Rebates**

Priority Customer Complex Tier⁽⁷⁾ ⁽¹³⁾ ⁽¹⁶⁾	Total Affiliated Member or Affiliated Entity Complex Order Volume (Excluding Crossing Orders and Responses to Crossing Orders) Calculated as a Percentage of Customer Total Consolidated Volume	Rebate for Select Symbols⁽¹⁾	Rebate for Non- Select Symbols⁽¹⁾⁽⁴⁾
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Tier 1	0.000% - 0.200%	(\$0.25)	(\$0.40)
Tier 2	Above 0.200% - 0.400%	(\$0.30)	(\$0.55)
Tier 3	Above 0.400% - 0.450%	(\$0.35)	(\$0.70)
Tier 4	Above 0.450% - 0.750%	(\$0.40)	(\$0.75)
Tier 5	Above 0.750% - 1.000%	(\$0.45)	(\$0.80)
Tier 6	Above 1.000% - 1.350%	(\$0.47)	(\$0.80)
Tier 7	Above 1.350% - 2.000%	(\$0.48)	(\$0.80)
Tier 8	Above 2.000% - 2.600%	(\$0.50)	(\$0.85)
Tier 9	Above 2.600%	(\$0.52)	(\$0.85)

First, the Exchange proposes to amend the criteria to qualify for Tiers 8 and 9 and certain rebates as discussed below.

Today, Tier 8 of the Complex Order Priority Customer Rebates requires Members to submit above 2.000% - 2.60% of Total Affiliated Member or Affiliated Entity Complex Order Volume (Excluding Crossing Orders and Responses to Crossing Orders) Calculated as a Percentage of Customer Total Consolidated Volume in order to receive a \$0.50 per contract rebate for Select Symbols³ and an \$0.85 per contract rebate for Non-Select Symbols.⁴ The Exchange proposes to amend the qualifications of Tier 8 to require Members to submit above 2.000% - 2.750% of Total Affiliated Member or Affiliated Entity Complex Order Volume (Excluding Crossing Orders and Responses to Crossing Orders) Calculated as a Percentage of Customer Total Consolidated Volume to receive an increased \$0.52 per contract rebate for Select Symbols and continue to receive an \$0.85 per contract rebate for Non-Select Symbols. The Exchange is both amending the qualifications for Tier 8 and increasing the rebate for Select Symbols with this proposal. A Member who qualified for Tier 8 in a prior month, with above

³ “Select Symbols” are options overlying all symbols listed on the Nasdaq ISE that are in the Penny Interval Program. See Options 7, Section 1(b).

⁴ “Non-Select Symbols” are options overlying all symbols excluding Select Symbols. See Options 7, Section 1(b).

2.000% to 2.60% of Total Affiliated Member or Affiliated Entity Complex Order Volume (Excluding Crossing Orders and Responses to Crossing Orders) Calculated as a Percentage of Customer Total Consolidated Volume (“Current Tier 8 Volume”), would continue to qualify for Tier 8 rebates with this proposal if that same amount of volume was submitted. The Member would qualify for an increased Tier 8 Rebate for Select Symbols of \$0.52 per contract when submitting Current Tier 8 Volume and the same \$0.85 per contract Tier 8 Rebate for Non-Select Symbols.

Today, Tier 9 of the Complex Order Priority Customer Rebates requires Members to submit above 2.600% of Total Affiliated Member or Affiliated Entity Complex Order Volume (Excluding Crossing Orders and Responses to Crossing Orders) Calculated as a Percentage of Customer Total Consolidated Volume in order to receive a \$0.52 per contract rebate for Select Symbols and an \$0.85 per contract rebate for Non-Select Symbols. The Exchange proposes to amend the qualifications of Tier 9 to require Members to submit above 2.750% - 4.500% of Total Affiliated Member or Affiliated Entity Complex Order Volume (Excluding Crossing Orders and Responses to Crossing Orders) Calculated as a Percentage of Customer Total Consolidated Volume to continue to receive a \$0.52 per contract rebate for Select Symbols and an increased \$0.86 per contract rebate for Non-Select Symbols. The Exchange is both amending the qualifications for Tier 9 and increasing the rebate for Non-Select Symbols with this proposal. A Member who qualified for Tier 9 in a prior month, with above 2.600% of Total Affiliated Member or Affiliated Entity Complex Order Volume (Excluding Crossing Orders and Responses to Crossing Orders) Calculated as a Percentage of Customer Total Consolidated Volume (“Current Tier 9 Volume”), may continue to qualify for Tier 9 rebates with this proposal if the Member submitted greater than 2.750% volume Calculated as a Percentage of Customer Total

Consolidated Volume. A Member who submitted the same amount of volume as in the prior month would receive either: (1) an increased Tier 8 Rebate for Select Symbols of \$0.52 per contract and the same \$0.85 per contract Rebate for Non-Select Symbols; or (2) the same Tier 9 Rebate for Select Symbols of \$0.52 per contract and an increased \$0.86 per contract Rebate for Non-Select Symbols, depending on the Member's volume Calculated as a Percentage of Customer Total Volume. Also, with this proposal, a Member would have the opportunity to qualify for increased Tier 10 rebates of \$0.53 per contract for Select Symbols and \$0.88 per contract for Non-Select Symbols by submitting above 4.500% of Total Affiliated Member or Affiliated Entity Complex Order Volume (Excluding Crossing Orders and Responses to Crossing Orders) Calculated as a Percentage of Customer Total Consolidated Volume.

Second, the Exchange proposes to add a new Priority Customer Complex Order Tier 10 which requires Members to submit above 4.500% of Total Affiliated Member or Affiliated Entity Complex Order Volume (Excluding Crossing Orders and Responses to Crossing Orders) Calculated as a Percentage of Customer Total Consolidated Volume to receive a \$0.53 per contract rebate for Select Symbols and an \$0.88 per contract rebate for Non-Select Symbols. This new Tier 10 would offer Members an opportunity to earn higher Priority Customer Complex Order rebates on ISE.

The Exchange believes that amending Priority Customer Complex Order Rebate Tiers 8 and 9 and adding a new Tier 10 will attract a greater amount of Priority Customer Complex Order volume to ISE.

Maker and Taker Fees for Complex Orders

Today, the Exchange assesses certain Maker and Taker Fees for Complex Orders transacted on ISE as follows:

Maker and Taker Fees

Market Participant	Maker Fee for Select Symbols	Maker Fee for Non-Select Symbols	Maker Fee for Select Symbols when trading against Priority Customer	Maker Fee for non-Select Symbols when trading against Priority Customer	Taker Fee for Select Symbols	Taker Fee for Non-Select Symbols
Market Maker	\$0.10	\$0.20	\$0.47 ⁽³⁾	\$0.86	\$0.50 ⁽³⁾	\$0.86 ⁽⁸⁾
Non-Nasdaq ISE Market Maker (FarMM)	\$0.20	\$0.20	\$0.48	\$0.88	\$0.50	\$0.88 ⁽⁸⁾
Firm Proprietary / Broker-Dealer	\$0.10	\$0.20	\$0.48	\$0.88	\$0.50	\$0.88 ⁽⁸⁾
Professional Customer	\$0.10	\$0.20	\$0.48	\$0.88	\$0.50	\$0.88 ⁽⁸⁾
Priority Customer	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00

Current note 3 of Options 7, Section 4, which applies to orders for Market Makers who qualify for the Complex Order Maker Fee for Select Symbols when trading against Priority Customer Complex Orders and the Complex Order Taker Fee for Select Symbols, states, “This fee is \$0.47 per contract for Market Makers that achieve Priority Customer Complex Tier 8 and \$0.44 per contract for Market Makers that achieve Priority Customer Complex Tier 9.” Current note 8 of Options 7, Section 4 which applies to Complex Orders of Market Makers, Non-Nasdaq ISE Market Makers (FarMM), Firm Proprietary/Broker-Dealers, and Professional Customers who qualify for the Complex Order Taker Fee for Non-Select Symbols, states, “A \$0.05 per contract surcharge will be assessed to non-Priority Customer Complex Orders that take liquidity from the Complex Order Book, excluding Complex Orders executed in the Facilitation Mechanism, Solicited Order Mechanism, Price Improvement Mechanism and "exposure" auctions pursuant to

Options 3, Section 14(c)(3).”

The Exchange proposes to increase the Complex Order Maker Fees for Select Symbols when trading against Priority Customer for Market Makers from \$0.47 to \$0.50 per contract. The Exchange also proposes to increase the Complex Order Maker Fees for Select Symbols when trading against Priority Customer for Non-Nasdaq ISE Market Makers (FarMM), Firm Proprietary/Broker-Dealers, and Professional Customers from \$0.48 to \$0.50 per contract. Priority Customers would continue to pay no Complex Order Maker Fees for Select Symbols when trading against Priority Customer.

In addition, the Exchange proposes to amend note 3 which is applicable to the aforementioned Complex Order Maker and Taker Fees by instead providing, “This fee is \$0.49 per contract for Market Makers that achieve Priority Customer Complex Tier 8, \$0.47 per contract for Market Makers that achieve Priority Customer Complex Tier 9, and \$0.44 per contract for Market Makers that achieve Priority Customer Complex Tier 10.”

While the Exchange is increasing the Complex Order Maker Fees for Select Symbols when trading against Priority Customers, Market Makers, Non-Nasdaq ISE Market Makers (FarMM), Firm Proprietary/Broker-Dealers, and Professional Customers who qualify for Priority Customer Complex Order Tiers 8 and 9 or new Tier 10, would continue to receive lower Complex Order Maker Fees, which is intended to incentive these Members to transact a greater amount of Priority Customer Complex Orders on ISE.

Technical Amendments

The Exchange proposes to remove reserved note 17 within Options 7, Section 4 because this note is not necessary. The Exchange also proposes to remove obsolete date references and

an obsolete rate within Options 7, Section 9.C. related to the Options Regulatory Fee. The dates refer to past dates.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁵ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁶ 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 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.”⁷

Likewise, in NetCoalition v. Securities and Exchange Commission⁸ (“NetCoalition”) the D.C. Circuit upheld the Commission’s use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.⁹ As the court emphasized, the Commission “intended in Regulation NMS that ‘market forces,

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4) and (5).

⁷ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

⁸ NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

⁹ See NetCoalition, at 534 - 535.

rather than regulatory requirements’ play a role in determining the market data . . . to be made available to investors and at what cost.”¹⁰

Further, “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’”¹¹ Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

Options 7, Section 4

Priority Customer Rebates for Complex Orders

The Exchange’s proposal to amend the qualifications of Tier 8, to require Members to submit above 2.000% - 2.750% of Total Affiliated Member or Affiliated Entity Complex Order Volume (Excluding Crossing Orders and Responses to Crossing Orders) Calculated as a Percentage of Customer Total Consolidated Volume in order to receive an increase \$0.52 per contract rebate for Select Symbols and continue to receive an \$0.85 per contract rebate for Non-Select Symbols, and its proposal to amend the qualifications of Tier 9, to require Members to submit above 2.750% - 4.500% of Total Affiliated Member or Affiliated Entity Complex Order Volume (Excluding Crossing Orders and Responses to Crossing Orders) Calculated as a Percentage of Customer Total Consolidated Volume to continue to receive a \$0.52 per contract

¹⁰ Id. at 537.

¹¹ Id. at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

rebate for Select Symbols and an increased \$0.86 per contract rebate for Non-Select Symbols, are reasonable. The Exchange believes amending Priority Customer Complex Order Tiers 8 and 9 will attract a greater amount of Priority Customer Complex Order volume to ISE. Specifically, Members who desire to qualify for the increased \$0.52 per contract rebate for Select Symbols in Tier 8 or continue to qualify for an \$0.85 per contract rebate for Non-Select Symbols in Tier 8 or Members who desire to continue to qualify for the \$0.52 per contract rebate in Select Symbols for Tier 9 or an increased \$0.86 per contract rebate for Non-Select Symbols in Tier 9 will be encouraged to submit the requisite order flow to obtain the same or higher rebates. With respect to Priority Customer Complex Order Tier 8, the Exchange notes that the proposed amendment should not result in lower rebates for any Member submitting the same Complex Order volume as the Member submitted in the prior month. With respect to Priority Customer Complex Order Tier 9, Members who qualified for Tier 8 in a prior month with Current Tier 8 Volume¹² would continue to qualify for Tier 8 rebates with this proposal if that same amount of volume was submitted and would receive an increased Tier 8 Rebate for Select Symbols of \$0.52 per contract and the same \$0.85 per contract Rebate for Non-Select Symbols. In addition, the Member may earn increased Tier 9¹³ or Tier 10 rebates if the Member submitted additional qualifying volume. Therefore, the Member would receive the same or higher Tier 8 rebates.

Members who qualified for Tier 9 in a prior month with Current Tier 9 Volume may

¹² Today, Tier 8 of the Complex Order Priority Customer Rebates pays rebates to Members who submit above 2.000% - 2.60% of Total Affiliated Member or Affiliated Entity Complex Order Volume (Excluding Crossing Orders and Responses to Crossing Orders) Calculated as a Percentage of Customer Total Consolidated Volume. With this proposal, Members who submit above 2.000% - 2.750% of Total Affiliated Member or Affiliated Entity Complex Order Volume (Excluding Crossing Orders and Responses to Crossing Orders) Calculated as a Percentage of Customer Total Consolidated Volume are entitled to rebates.

¹³ The Exchange notes that the propose Tier 8 Rebate for Select Symbols and the Tier 9 Rebate for Select Symbols, which remains unchanged, are both \$0.52 per contract.

continue to qualify for Tier 9 rebates with this proposal if the Member submitted greater than 2.750% volume and would receive either: (1) an increased Tier 8 Rebate for Select Symbols of \$0.52 per contract and the same \$0.85 per contract Rebate for Non-Select Symbols; or (2) the same Tier 9 Rebate for Select Symbols of \$0.52 per contract and an increased \$0.86 per contract Rebate for Non-Select Symbols, depending on the Member's volume Calculated as a Percentage of Customer Total Consolidated Volume. Despite the increase required in Complex Order volume for Priority Customer Complex Order Tier 9, the Exchange's proposal offers Members an opportunity to earn the same or higher Tier 9 rebates. Also, with this proposal, a Member would have the opportunity to qualify for increased Tier 10 rebates of \$0.53 per contract for Select Symbols and \$0.88 per contract for Non-Select Symbols by submitting above 4.500% of Total Affiliated Member or Affiliated Entity Complex Order Volume (Excluding Crossing Orders and Responses to Crossing Orders) Calculated as a Percentage of Customer Total Consolidated Volume. The Priority Customer Complex Order rebate program is optional and available to all Members that choose to transact Complex Order flow on ISE in order to earn a rebate on their Priority Customer Complex Order volume. To the extent the program, as modified, continues to attract Complex Order volume to the Exchange, the Exchange believes that the proposed changes would improve the Exchange's overall competitiveness and strengthen its market quality for all market participants.

The Exchange's proposal to add a new Priority Customer Complex Order Tier 10, which requires Members to submit above 4.500% of Total Affiliated Member or Affiliated Entity Complex Order Volume (Excluding Crossing Orders and Responses to Crossing Orders) Calculated as a Percentage of Customer Total Consolidated Volume in order to receive a \$0.53 per contract rebate for Select Symbols and an \$0.88 per contract rebate for Non-Select Symbols

is reasonable. The Exchange believes proposed new Tier 10 will attract a greater amount of Priority Customer Complex Order volume to ISE as the Exchange proposes to pay \$0.53 per contract rebate for Select Symbols and \$0.88 per contract rebate for Non-Select Symbols, the highest Priority Customer Complex Order rebates for that order flow.

The Exchange's proposals to amend the tier qualifications for Priority Customer Complex Order Tiers 8 and 9, increase the Select Symbol rebate in Tier 8, increase the Non-Select Symbol rebate in Tier 9, and add a new Priority Customer Complex Order Tier 10 with rebates of \$0.53 per contract for Select Symbols and \$0.88 per contract for Non-Select Symbols are equitable and not unfairly discriminatory. Any ISE Member may qualify for a Priority Customer Complex Order rebate tier, provided the qualifications are met. By encouraging all Members to transact significant amounts of Priority Customer Complex Order flow (i.e., to qualify for the higher tiers) in order to earn a higher rebate on their Priority Customer Complex Orders, the Exchange seeks to provide more trading opportunities for all market participants, thereby promoting price discovery, and improving the overall market quality of the Exchange. ISE would uniformly pay rebates to Members that qualified for Priority Customer Complex Order rebates. The Exchange anticipates all Members that currently qualify for the Tier 8 or 9 Priority Customer Complex Order rebates will receive the same or higher rebates with this proposal. Also, any Member may qualify for the new Tier 10 Priority Customer Complex Order rebate to earn even higher rebates. To the extent the proposed changes encourage additional Members to strive for the modified tiers and thus attract more Priority Customer Complex Order volume to the Exchange, this increased order flow would improve the overall quality and attractiveness of the Exchange.

Maker and Taker Fees for Complex Orders

The Exchange's proposal to increase the Complex Order Maker Fees for Select Symbols when trading against Priority Customer for Market Makers from \$0.47 to \$0.50 per contract and to increase the Complex Order Maker Fees for Select Symbols when trading against Priority Customer for Non-Nasdaq ISE Market Makers (FarMM), Firm Proprietary/Broker-Dealers, and Professional Customers from \$0.48 to \$0.50 per contract is reasonable because while the Exchange is proposing to increase these fees, the Exchange believes that market participants will continue to be incentivized to send Priority Customer order flow to ISE to obtain rebates offered by the Exchange. Additionally, Market Makers would continue to be offered the opportunity to reduce their Complex Order Maker Fees. If a Market Maker qualifies for Priority Customer Complex Order Tiers 8 and 9, the Complex Order Maker Fee would be reduced to \$0.49 and \$0.47 per contract, respectively. In addition, a Market Maker that qualifies for Priority Customer Complex Order Tier 10 would reduce the Complex Order Maker Fees to \$0.44 per contract. Finally, Priority Customers will continue to pay no Maker Fees for Select Symbols when trading against Priority Customer.

The Exchange's proposal to increase the Complex Order Maker Fees for Select Symbols when trading against Priority Customer for Market Makers from \$0.47 to \$0.50 per contract and to increase the Complex Order Maker Fees for Select Symbols when trading against Priority Customer for Non-Nasdaq ISE Market Makers (FarMM), Firm Proprietary/Broker-Dealers, and Professional Customers from \$0.48 to \$0.50 per contract is equitable and not unfairly discriminatory as all Non-Priority Customers would be assessed the same Complex Order Maker Fees for Select Symbols when trading against Priority Customer. Priority Customer orders bring valuable liquidity to the market which liquidity benefits other market participants. Priority

Customers are not assessed Complex Order Maker Fees for Select Symbols when trading against Priority Customer.

The Exchange's proposal to amend note 3 of Options 7, Section 4 with respect to Complex Order Maker Fees for Select Symbols when trading against Priority Customer for Market Makers as well as Complex Order Taker Fees for Select Symbols for Market Makers is reasonable because while the Exchange is reducing the fee discount for Members who qualify for Priority Customer Complex Order Tiers 8 and 9,¹⁴ Market Makers will continue to have the opportunity to reduce their costs when they qualify for Priority Customer Complex Order Tiers 8 and 9. The Exchange will continue to offer Market Makers the opportunity to reduce Complex Order Maker Fees for Select Symbols when trading against Priority Customers, as well as Complex Order Taker Fees for Select Symbols. The Exchange's proposal also offers Market Makers a fee discount when trading against Priority Customer Complex Orders if the qualifications for new Tier 10 are met.¹⁵

The Exchange's proposal to amend note 3 of Options 7, Section 4 with respect to Complex Order Maker Fees for Select Symbols when trading against Priority Customer for Market Makers as well as Complex Order Taker Fees for Select Symbols for Market Makers is equitable and not unfairly discriminatory. Market Makers would continue to be permitted to lower their Maker Fees for Select Symbols when trading against Priority Customers, as well as

¹⁴ Today, the Exchange offers Market Makers the opportunity to reduce the Complex Order Maker Fee for Select Symbols when trading against Priority Customer and the Complex Order Taker Fee for Select Symbols to \$0.47 per contract for Tier 8 and \$0.44 per contract for Tier 9. With this proposal, the fee discount within note 3 would decrease. The Exchange would offer Market Makers that qualify for Priority Customer Complex Order Tier 8 a rate of \$0.49 per contract, and the Exchange would offer Market Makers that qualify for Priority Customer Complex Order Tier 9 a rate of \$0.47 per contract.

¹⁵ The Exchange would offer Market Makers that qualify for Priority Customer Complex Order Tier 10 a rate of \$0.44 per contract.

Taker Fees for Select Symbols, provided the Market Maker qualified for Priority Customer Complex Order Tiers 8, 9 or 10. Today, Market Makers are able to lower their Maker Fees for Select Symbols when trading against Priority Customers, as well as Taker Fees for Select Symbols, provided they qualify for Priority Customer Complex Order Tiers 8 or 9. With this proposal Market Makers would also be able to lower their Maker Fees for Select Symbols when trading against Priority Customers, as well as Taker Fees for Select Symbols, if they qualify for new Priority Customer Complex Order Tier 10. Unlike other market participants, Market Makers have an obligation to maintain quotes¹⁶ and provide liquidity in the regular market. The Exchange is providing Market Makers the opportunity to reduce their Maker Fees for Select Symbols when trading against Priority Customers, as well as Taker Fees for Select Symbols, provided the Market Maker qualified for Priority Customer Complex Order Tiers 8, 9 or 10, to incentivize these market participants to continue to provide liquidity on ISE.

Technical Amendments

The Exchange's proposal to remove reserved note 17 within Options 7, Section 4 is reasonable, equitable and not unfairly discriminatory as this note is not necessary and the amendment is non-substantive. The Exchange's proposal to remove obsolete date references and an obsolete rate within Options 7, Section 9.C. related to the Options Regulatory Fee is reasonable, equitable and not unfairly discriminatory as the dates have passed and the rate is obsolete.

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.

¹⁶ See ISE, Options 2, Section 5.

Inter-market Competition

The proposal does not impose an undue burden on inter-market competition. The Exchange believes its proposal remains competitive with other options markets and will offer market participants with another choice of where to transact options. 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 that have been exempted from compliance with the statutory standards applicable to 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.

Intra-market Competition

The proposed amendments do not impose an undue burden on intra-market competition.

Options 7, Section 4

Priority Customer Rebates for Complex Orders

The Exchange's proposals to amend the tier qualifications for Priority Customer Complex Order Tiers 8 and 9, increase the Select Symbol rebate in Tier 8, increase the Non-Select Symbol rebate in Tier 9, and add a new Priority Customer Complex Order Tier 10 with rebates of \$0.53 per contract for Select Symbols and \$0.88 per contract for Non-Select Symbols does not impose an undue burden on competition. Any ISE Member may qualify for a Priority Customer Complex Order rebate tier, provided the qualifications are met. By encouraging all Members to transact significant amounts of Priority Customer Complex Order flow (i.e., to

qualify for the higher tiers) in order to earn a higher rebate on their Priority Customer Complex Orders, the Exchange seeks to provide more trading opportunities for all market participants, thereby promoting price discovery, and improving the overall market quality of the Exchange. ISE would uniformly pay rebates to Members that qualified for Priority Customer Complex Order rebates. The Exchange anticipates all Members that currently qualify for the Tier 8 Priority Customer Complex Order rebates will receive the same or higher Tier 8 rebates with this proposal. Members that currently qualify for Tier 9 Priority Customer Complex Order rebates may need to submit additional Priority Customer Complex Order flow to continue to qualify for the same or higher Tier 9 rebates. Also, any Member may qualify for the new Tier 10 Priority Customer Complex Order rebate to earn even higher rebates. To the extent the proposed changes encourage additional Members to strive for the modified tiers and thus attract more Priority Customer Complex Order volume to the Exchange, this increased order flow would improve the overall quality and attractiveness of the Exchange. .

Maker and Taker Fees for Complex Orders

The Exchange's proposal to increase the Complex Order Maker Fees for Select Symbols when trading against Priority Customer for Market Makers from \$0.47 to \$0.50 per contract and to increase the Complex Order Maker Fees for Select Symbols when trading against Priority Customer for Non-Nasdaq ISE Market Makers (FarMM), Firm Proprietary/Broker-Dealers, and Professional Customers from \$0.48 to \$0.50 per contract does not impose an undue burden on competition as all Non-Priority Customers would be assessed the same Complex Order Maker Fees for Select Symbols when trading against Priority Customer. Priority Customer orders bring valuable liquidity to the market which liquidity benefits other market participants. Priority

Customers are not assessed Complex Order Maker Fees for Select Symbols when trading against Priority Customer.

The Exchange's proposal to amend note 3 of Options 7, Section 4 with respect to Complex Order Maker Fees for Select Symbols when trading against Priority Customer for Market Makers as well as Complex Order Taker Fees for Select Symbols for Market Makers does not impose an undue burden on competition. Market Makers would continue to be permitted to lower their Maker Fees for Select Symbols when trading against Priority Customers, as well as Taker Fees for Select Symbols, provided the Market Maker qualified for Priority Customer Complex Order Tiers 8, 9 or 10. Today, Market Makers are able to lower their Maker Fees for Select Symbols when trading against Priority Customers, as well as Taker Fees for Select Symbols, provided they qualify for Priority Customer Complex Order Tiers 8 or 9. With this proposal Market Makers would also be able to lower their Maker Fees for Select Symbols when trading against Priority Customers, as well as Taker Fees for Select Symbols, if they qualify for new Priority Customer Complex Order Tier 10. Unlike other market participants, Market Makers have an obligation to maintain quotes¹⁷ and provide liquidity in the regular market. The Exchange is providing Market Makers the opportunity to reduce their Maker Fees for Select Symbols when trading against Priority Customers, as well as Taker Fees for Select Symbols, provided the Market Maker qualified for Priority Customer Complex Order Tiers 8, 9 or 10, to incentivize these market participants to continue to provide liquidity on ISE.

Technical Amendments

The Exchange's proposal to remove reserved note 17 within Options 7, Section 4 does not impose an undue burden on competition as this note is not necessary and the amendment is

¹⁷ See ISE, Options 2, Section 5.

non-substantive. The Exchange's proposal to remove obsolete date references and an obsolete rate within Options 7, Section 9.C. related to the Options Regulatory Fee does not impose an undue burden on competition.

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 Act¹⁸ and Rule 19b-4(f)(2)¹⁹ thereunder. 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 (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-ISE-2020-39 on the subject line.

¹⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁹ 17 CFR 240.19b-4(f)(2).

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-2020-39. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying

information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ISE-2020-39 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

J. Matthew DeLesDernier
Assistant Secretary

²⁰ 17 CFR 200.30-3(a)(12).