Postal Service has certified that the meeting may be closed under the Government in the Sunshine Act.

CONTACT PERSON FOR MORE INFORMATION: Michael J. Elston, Secretary of the Board of Governors, U.S. Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260–1000. Telephone: (202) 268–4800.

Michael J. Elston,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95590; File No. SR–ISE–2022–16]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Pricing Schedule at Options 7

August 24, 2022.

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 August 9, 2022, 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 the Exchange's Pricing Schedule at Options 7, as described further below.[3]

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

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

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

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

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's Pricing Schedule at Options 7. Each change is described below.

Price Improvement Auctions, Options 7, Sections 3 and 6

Currently, for Regular Orders[4] in Select[5] and Non-Select Symbols,[6] the Exchange assesses all non-Priority Customer market participants a Fee for PIM[7] Orders of $0.10 per contract.[8] Additionally, today, for Regular Orders in Select Symbols, the Exchange assesses all market participants a Fee for Responses to PIM Orders of $0.50 per contract. Finally, today, for Regular Orders in Non-Select Symbols, the Exchange assesses all market participants a Fee for Responses to PIM Orders of $1.10 per contract.[9]

Similar to break-up rebates for the Exchange's Facilitation Mechanism and Solicited Order Mechanism,[10] the Exchange proposes to pay Electronic Access Members[11] that utilize PIM to execute more than 0.75% of Priority Customer[12] volume of Regular Orders, calculated as a percentage of Customer Total Consolidated Volume (''TCV'') per day in a given month, a PIM Break-Up Rebate of $0.25 per contract for Select Symbols and $0.60 per contract for Non-Select Symbols for Priority Customer Orders under 100 contracts that are submitted to PIM and do not trade with their contra order except when those contracts trade against unrelated quotes or orders.[13]

The Exchange seeks to incentivize Electronic Access Members to submit a greater amount of smaller, more typically sized Priority Customer orders into PIM for price improvement with the proposed pricing. The Exchange believes the 100 contract threshold represents such small-sized orders.

Today, the Exchange offers a PIM Rebate within Options 7, Section 6, Other Options Fees and Rebates. Specifically, Options 7, Section 6B pays a rebate to Electronic Access Members utilizing either the Facilitation Mechanism or PIM for unsolicited Crossing Orders, whereby the contra-side party of the Crossing Order (1) is either Firm Proprietary or Broker-Dealer and (2) has total affiliated Average Daily Volume (''ADV'') of 250,000 or more contracts. Electronic Access Members that qualify for this rebate are eligible to earn the following rebates during a given month:

Originating contract sides	Rebate
0 to 199,999	($0.02)
200,000 or more	(0.03)

Once a Member reaches or exceeds the volume threshold to qualify for a $0.03 per originating contract side rebate during a given month, then the Member will receive the $0.03 per contract rebate for all of its originating contract sides that qualify for the PIM and Facilitation Rebate during that month, including for the Member's first

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

[2] 17 CFR 240.19b–4.

[3] The Exchange originally filed SR–ISE–2022–15 on August 1, 2022. On August 9, 2022, the Exchange withdrew SR–ISE–2022–15 and submitted this rule change.

[4] A ''Regular Order'' is an order that consists of only a single option series and is not submitted with a stock leg.

[5] ''Select Symbols'' are options overlying all symbols listed on the Nasdaq ISE that are in the Penny Interval Program. *See* Options 7, Section 1(c).

[6] ''Non-Select Symbols'' are options overlying all symbols excluding Select Symbols. *See* Options 7, Section 1(c).

[7] PIM is the Exchange's Price Improvement Auction as described in Options 3, Section 13. A PIM is comprised of the order the Electronic Access Member represents as agent (the ''Agency Order'') and a counter-side order for the full size of the Agency Order (the ''Counter-Side Order''). Responses, including the Counter-Side Order, and Improvement Orders may be entered during the exposure period. *See* Options 3, Section 13.

[8] Priority Customers are not assessed a Fee for PIM Orders. Also, Fees for PIM Orders apply to the originating and contra order. Further, other than for Priority Customer orders, this fee is $0.05 per contract for orders executed by Members that execute an ADV of 7,500 or more contracts in the PIM in a given month. Members that execute an ADV of 12,500 or more contracts in the PIM are charged $0.02 per contract. The discounted fees are applied retroactively to all eligible PIM volume in that month once the threshold has been reached. *See* notes 2 and 13 within the Pricing Schedule at Options 7, Section 3.

[9] PIM pricing is specified in Options 7, Section 3, Regular Order Fees and Rebates.

[10] *See* Options 3, Section 11(b) and (d).

[11] The term ''Electronic Access Member'' or ''EAM'' means a Member that is approved to exercise trading privileges associated with EAM Rights. *See* General 1, Section 1(a)(6).

[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)(37). Unless otherwise noted, when used in this Pricing Schedule the term ''Priority Customer'' includes ''Retail'' as defined below. *See* Options 7, Section 1(c).

[13] The applicable fee would be applied to any contracts for which a rebate is provided.

qualifying 0–199,999 originating contract sides. Further, Electronic Access Members that qualify for the PIM rebates on their unsolicited Crossing Orders [14] may also earn additional rebates.[15]

At this time, the Exchange proposes to offer another rebate to Electronic Access Members that utilize PIM to execute more than 0.75% of Priority Customer volume in Regular Orders, calculated as a percentage of Customer TCV per day in a given month. The Exchange proposes to pay these Electronic Access Members a rebate of $0.11 per contract for Priority Customer Regular Orders under 100 contracts that are submitted to PIM. The rebate would be paid to the Agency Order as that term is defined within Options 3, Section 13. Eligible volume from Affiliated Members [16] would be aggregated in calculating the percentage. Additionally, the Exchange proposes to pay this rebate in lieu of other PIM rebates within Options 7, Section 6B, provided this rebate is higher than other rebates within Options 7, Section 6B. In the event a Crossing Transaction consists of two Priority Customer Orders, the Exchange would not pay this rebate.

As noted above, the Exchange seeks to incentivize Electronic Access Members to submit a greater amount of smaller sized Priority Customer orders into PIM for price improvement with the proposed pricing and, therefore, is proposing to pay the proposed rebate on orders under 100 contracts.

The Exchange notes that all Electronic Access Members may participate in a PIM.[17] Accordingly, the proposed rebates are designed to incentivize Electronic Access Members to submit a greater amount of Regular Orders executed in PIM to the Exchange, particularly Priority Customer PIM volume.

Priority Customer Complex Order Rebates, Options 7, Section 4

Currently, the Exchange provides rebates to Priority Customer complex orders based on the volume that a Member traded as provided for within Options 7, Section 4, Complex Order Fees and Rebates. Specifically, the Exchange calculates Total Affiliated Member or Affiliated Entity [18] Complex Order Volume (excluding Crossing Orders and Responses to Crossing Order) as a percentage of Customer TCV to determine the rebate amount.[19] The Exchange pays Priority Customer complex orders rebates based on a ten-tier pricing model. The rebates for Select Symbols and Non-Select Symbols are paid to Members based on the percentage of Customer TCV executed in a particular symbol. The current rebate tiers are as follows:

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)
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%–2.750%	(0.52)	(0.85)
Tier 9	Above 2.750%–4.500%	(0.52)	(0.86)
Tier 10	Above 4.500%	(0.53)	(0.88)

The Exchange offers the Priority Customer complex order rebates to encourage Members to bring complex volume to the Exchange, including incentivizing Members to bring Priority Customer complex orders specifically to earn the associated rebates.

[14] A ''Crossing Order'' is an order executed in the Exchange's Facilitation Mechanism, Solicited Order Mechanism, Price Improvement Mechanism (''PIM'') or submitted as a Qualified Contingent Cross order. For purposes of this Pricing Schedule, orders executed in the Block Order Mechanism are also considered Crossing Orders. *See* Options 7, Section 1(c).

[15] Members that achieve combined Qualified Contingent Cross (''QCC'') and Solicitation Originating Contracts Sides of more than 1,000,000 during a given month can earn an additional rebate of ($0.01) per originating contract side on their unsolicited Crossing Orders that qualify for the PIM and Facilitation Rebate program. Also, Members that achieve Priority Customer Complex Order ADV of between 100,000–224,999 contracts can earn an additional rebate of ($0.01) per originating contract side on all of their unsolicited Crossing Orders that qualify for the PIM and Facilitation Rebate program; however, this additional rebate will be ($0.02) per originating contract on all unsolicited Crossing Orders that qualify for the PIM and Facilitation Rebate Program to the extent that Members achieve Priority Customer Complex Order ADV of 225,000 or more contracts. *See* Options 7, Section 6B.

[16] An ''Affiliated Member'' is a Member that shares at least 75% common ownership with a particular Member as reflected on the Member's Form BD, Schedule A. *See* Options 7, Section 1(c).

[17] Any solicited Counter-Side Orders submitted by an Electronic Access Member to trade against Agency Orders may not be for the account of a Nasdaq ISE Market Maker assigned to the options class. *See* Supplementary Material .06 to Options 3, Section 13.

[18] An ''Affiliated Entity'' is a relationship between an Appointed Market Maker and an Appointed OFP for purposes of qualifying for certain pricing specified in the Schedule of Fees. Market Makers and OFPs are required to send an email to the Exchange to appoint their counterpart, at least 3 business days prior to the last day of the month to qualify for the next month. The Exchange will acknowledge receipt of the emails and specify the date the Affiliated Entity is eligible for applicable pricing, as specified in the Pricing Schedule. Each Affiliated Entity relationship will commence on the 1st of a month and may not be terminated prior to the end of any month. An Affiliated Entity relationship will automatically renew each month until or unless either party terminates earlier in writing by sending an email to the Exchange at least 3 business days prior to the last day of the month to terminate for the next month. Affiliated Members may not qualify as a counterparty comprising an Affiliated Entity. Each Member may qualify for only one (1) Affiliated Entity relationship at any given time. *See* Options 7, Section 1(c).

[19] The rebate for the highest tier volume achieved is applied retroactively to all eligible Priority Customer Complex volume once the threshold has been reached. Members do not receive rebates for net zero complex orders. For purposes of determining which complex orders qualify as ''net zero'' the Exchange counts all complex orders that leg in to the Regular Order book and are executed at a net price per contract that is within a range of $0.01 credit and $0.01 debit.

All Complex Order volume executed on the Exchange, including volume executed by Affiliated Members, is included in the volume calculation, except for volume executed as Crossing Orders and Responses to Crossing Orders. Affiliated Entities may aggregate their Complex Order volume for purposes of calculating Priority Customer Rebates. The Appointed OFP would receive the rebate associated with the qualifying volume tier based on aggregated volume. *See* notes 7, 13 and 16 within the Pricing Schedule at Options 7, Section 4.

The Exchange proposes to amend the volume requirement for Priority Customer complex order Tier 7 from the current level of ''above 1.350%–2.00%'' to ''above 1.350%–1.750%.'' The Exchange also proposes to adjust Priority Customer complex order Tier 8 from the current level of ''above 2.000%–2.750%'' to ''above 1.750%–2.750%.'' [20] By lowering the qualification for Priority Customer complex order Tier 8, which offers a higher rebate of $0.52 per contract for Select Symbols as compared to $0.48 per contract for Priority Customer complex order Tier 7 and a higher rebate of $0.85 per contract for Non-Select Symbols as compared to $0.80 per contract for Priority Customer complex order Tier 7, the Exchange seeks to incentivize Members to continue to bring Priority Customer complex orders specifically to earn the higher Priority Customer complex order Tier 8 associated rebates.

The Exchange notes that all Members may elect to qualify for the Priority Customer complex rebates by submitting complex order flow to the Exchange and earn a rebate on their Priority Customer complex volume. Accordingly, the proposed changes are designed to increase the amount of complex order flow Members bring to the Exchange, particularly Priority Customer complex volume, and further encourage them to contribute to a deeper, more liquid market to the benefit of all market participants.

Technical Amendments

The Exchange proposes to make technical amendments to Options 7, Section 6B to remove the words ''Price Improvement Mechanism'' and the parenthesis around the word ''PIM'' because this term is already defined within the term ''Crossing Order'' at Options 7, Section 1(c).

The Exchange proposes to capitalize the work ''affiliated'' in Options 7, Section 6B because the term ''Affiliated Member'' is defined within Options 7, Section 1(c).

The Exchange proposes to remove the phrase ''provided there is at least 75% common ownership between the Members as reflected on each Member's Form BD, Schedule A'' because the term ''Affiliated Member'' is defined in Options 7, Section 1(c) as a Member that shares at least 75% common ownership with a particular Member as reflected on the Member's Form BD, Schedule A.

Finally, the Exchange proposes to remove the extra period at the end of Options 7, Section 6B.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[21] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[22] 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 Proposal Is Reasonable

The 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 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* [23] (''NetCoalition''), the D.C. Circuit stated, ''[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' . . . .'' [24]

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options transaction services. The Exchange is only one of sixteen 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. Within the foregoing context, the proposal represents a reasonable attempt by the Exchange to attract additional order flow to the Exchange and increase its market share relative to its competitors.

Price Improvement Auctions, Options 7, Sections 3 and 6

The Exchange's proposal to pay Priority Customer PIM Break-Up Rebates of $0.25 per contract for Select Symbols and $0.60 per contract for Non-Select Symbols to Electronic Access Members that utilize PIM to execute more than 0.75% of Priority Customer volume in Regular Orders, which would be calculated as a percentage of Customer TCV per day in a given month, for orders under 100 contracts is reasonable because it is designed to incentivize additional participation in PIM by encouraging market participants to send additional order flow to the Exchange in order to benefit from the increased rebates. In particular, the Exchange believes that this proposal will incentivize Electronic Access Members to submit a greater amount of smaller Priority Customer orders into PIM for price improvement with the proposed pricing. The Exchange believes it is reasonable to pay the rebate for orders of 100 contracts or less because the Exchange seeks to incentivize small-sized orders to be solicited for entry into PIM for price improvement.

The Exchange's proposal to pay Priority Customer PIM Break-Up Rebates of $0.25 per contract for Select Symbols and $0.60 per contract for Non-Select Symbols to Members that utilize PIM to execute more than 0.75% of Priority Customer volume in Regular Orders, which would be calculated as a percentage of Customer TCV per day in a given month, for orders under 100 contracts is equitable and not unfairly discriminatory because any Electronic Access Member may participate in a PIM.[25] While only Electronic Access Members may initiate a PIM, Market Makers may respond to a PIM. While this incentive is specifically targeted towards Priority Customer orders, the Exchange does not believe that this is unfairly discriminatory. Of note, today, Priority Customers pay no Fees for PIM Orders. Priority Customer liquidity benefits all market participants by providing more trading opportunities which attracts market makers. An increase in the activity of these market participants (particularly in response to pricing) in turn facilitates tighter spreads which may cause an additional

[20] Currently no Member qualifies for Priority Customer complex order Tier 8.

[21] 15 U.S.C. 78f(b).

[22] 15 U.S.C. 78f(b)(4) and (5).

[23] *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010).

[24] *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)).

[25] Any solicited Counter-Side Orders submitted by an Electronic Access Member to trade against Agency Orders may not be for the account of a Nasdaq ISE Market Maker assigned to the options class. *See* Supplementary Material .06 to Options 3, Section 13.

corresponding increase in order flow from other market participants. Attracting more liquidity from Priority Customers will benefit all market participants that trade on the ISE. Also, the 100 contracts threshold would be uniformly applied in paying the rebate.

The Exchange's proposal to offer another rebate for PIM executions to Electronic Access Members that utilize PIM to execute more than 0.75% of Priority Customer volume in Regular Orders, calculated as a percentage of Customer TCV per day in a given month, for Priority Customer Regular Orders executed in PIM under 100 contracts is reasonable because it is designed to incentivize additional participation in PIM by encouraging market participants to send additional order flow to the Exchange in order to benefit from the increased rebates. In particular, the Exchange believes that this additional rebate will incentivize Electronic Access Members to submit a greater amount of smaller-sized orders to be solicited for entry into PIM for price improvement. Aggregating volume from Affiliated Members in calculating the percentage will allow Electronic Access Members to obtain greater rebates and, thereby, should attract additional Priority Customer order flow to the Exchange. Not paying the $0.11 per contract rebate in the event a Crossing Transaction consists of two Priority Customer Orders is reasonable because Priority Customers pay no fees for PIM.

The Exchange's proposal to offer another rebate for PIM executions to Electronic Access Members that utilize PIM to execute more than 0.75% of Priority Customer volume in Regular Orders, calculated as a percentage of Customer TCV per day in a given month, for Priority Customer Regular Orders executed in PIM under 100 contracts is equitable and not unfairly discriminatory because any Electronic Access Member may enter orders into PIM.[26] While only Electronic Access Members may initiate a PIM, the Exchange notes that Market Makers may respond to a PIM. While this incentive is specifically targeted towards Priority Customer orders, the Exchange does not believe that this is unfairly discriminatory. Of note, today, Priority Customers pay no Fees for PIM Orders. Priority Customer liquidity benefits all market participants by providing more trading opportunities which attracts market makers. An increase in the activity of these market participants (particularly in response to pricing) in turn facilitates tighter spreads which may cause an additional corresponding increase in order flow from other market participants. Attracting more liquidity from Priority Customers will benefit all market participants that trade on the ISE. Also, the 100 contracts threshold would be uniformly applied in paying the rebate. All Electronic Access Members may aggregate volume from Affiliated Members to receive the rebate. It is not novel to limit a rebate by contract size. For example, ISE currently pays a reduced complex order rebate in Select Symbols where the largest leg of the Complex Order is under fifty (50) contracts and trades with quotes and orders on the Regular Order book.[27] Additionally, Cboe Exchange, Inc. (''Cboe'') has a similar concept of limiting certain fee incentives in its Fees Schedule for smaller sized customer orders.[28]

Priority Customer Complex Order Rebates, Options 7, Section 4

The Exchange's proposal to amend the volume requirement for Priority Customer complex order Tier 7 from the current level of ''above 1.350%–2.00%'' to ''above 1.350%–1.750%'' and amend Priority Customer complex order Tier 8 from the current level of ''above 2.000%–2.750%'' to ''above 1.750%–2.750%'' is reasonable because by lowering the qualification for Priority Customer complex order Tier 8, which offers a higher rebate of $0.52 per contract for Select Symbols as compared to $0.48 per contract for Priority Customer complex order Tier 7 and a higher rebate of $0.85 per contract for Non-Select Symbols as compared to $0.80 per contract for Priority Customer complex order Tier 7, the Exchange seeks to incentivize Members to continue to bring Priority Customer complex orders specifically to earn the higher Priority Customer complex order Tier 8 associated rebates.[29] The ability to earn a higher rebate as a result of the lower volume requirement is intended to further incentivize Members to bring additional complex order flow, including Priority Customer complex order flow, to the Exchange. The proposed changes are designed to make the rebates more achievable and attractive to existing and potential market participants. The Priority Customer complex rebate program is optional and available to all Members that choose to send complex order flow to the Exchange to earn a rebate on their Priority Customer complex volume. To the extent the program, as modified, continues to attract complex 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 amend the volume requirement for Priority Customer complex order Tier 7 from the current level of ''above 1.350%–2.00%'' to ''above 1.350%–1.750%'' and amend Priority Customer complex order Tier 8 from the current level of ''above 2.000%–2.750%'' to ''above 1.750%–2.750%'' is equitable and not unfairly discriminatory because any Member who brings complex order flow to the Exchange may qualify for the rebates. The Exchange believes that the proposed changes to Priority Customer complex order Tiers 7 and 8 are an equitable allocation of rebates because the Exchange seeks to further incentivize all Members to bring a significant amount of complex volume to the Exchange in order to earn the highest range of Priority Customer complex rebates offered by the Exchange. Accordingly, the Exchange believes that the changes to Priority Customer complex order Tiers 7 and 8 are reasonably designed to provide further incentives for all Members interested in meeting the tier criteria to submit additional Priority Customer complex volume to achieve the higher rebates. Further, any Member may choose to qualify for the rebate program by sending complex order flow to the Exchange. By encouraging all Members to bring significant amounts of complex order flow (*i.e.,* to qualify for the higher tiers) in order to earn a rebate on their Priority Customer complex orders, the Exchange seeks to provide more trading opportunities for all market participants, promote price discovery,

[26] Any solicited Counter-Side Orders submitted by an Electronic Access Member to trade against Agency Orders may not be for the account of a Nasdaq ISE Market Maker assigned to the options class. See Supplementary Material .06 to Options 3, Section 13.

[27] ISE's rebate is paid per contract per leg if the order trades with non-Priority Customer orders in the Complex Order Book. This rebate is reduced by $0.15 per contract in Select Symbols where the largest leg of the Complex Order is under fifty (50) contracts and trades with quotes and orders on the Regular Order book. Further, no Priority Customer Complex Order rebates are provided in Select Symbols if any leg of the order that trades with interest on the Regular Order book is fifty (50) contracts or more. Also, no Priority Customer Complex Order rebates are provided in Non-Select Symbols if any leg of the order trades with interest on the Regular Order book, irrespective of order size. *See* note 1 of ISE Options 7, Section 4.

[28] *See* Cboe Fees Schedule at footnote 9. Cboe waives transaction fees for customer orders removing liquidity that are of 99 contracts or less in ETF and ETN options.

[29] Currently no Member qualifies for Priority Customer complex order Tier 8.

and improve the overall market quality of the Exchange.

Technical Amendments

The technical amendments proposed herein are non-substantive because these amendments remove redundant defined terms, capitalize a defined term, and correct a grammatical error.

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.

Intermarket Competition

The Exchange 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 because other options exchanges offer similar price improvement auctions as well as break-up rebates and customer complex order rebates.

Moreover, as noted above, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and rebate changes. 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.

Intramarket Competition

The proposal is designed to attract additional liquidity to ISE. Specifically, amending the Priority Customer complex order rebates and adopting two new PIM rebates will incentivize market participants to direct liquidity to the Exchange. All market participants will benefit from any increase in market activity that the proposal effectuates.

Price Improvement Auctions, Options 7, Sections 3 and 6

The Exchange's proposal to pay Priority Customer PIM Break-Up Rebates within Options 7, Section 3, and offer another rebate for PIM executions within Options 7, Section 6B, do not impose an undue burden on competition because any Electronic Access Member may enter orders into PIM.[30] While only Electronic Access Members may initiate a PIM, the Exchange does not believe that this creates an undue burden on competition because Market Makers may respond to a PIM. While this incentive is specifically targeted towards Priority Customer orders, the Exchange does not believe that this is unfairly discriminatory. Today, Priority Customers pay no fees for PIM Orders. Priority Customer liquidity benefits all market participants by providing more trading opportunities which attracts market makers. An increase in the activity of these market participants (particularly in response to pricing) in turn facilitates tighter spreads which may cause an additional corresponding increase in order flow from other market participants. Attracting more liquidity from Priority Customers will benefit all market participants that trade on the ISE.

Priority Customer Complex Order Rebates, Options 7, Section 4

The Exchange's proposal to amend the volume requirement for Priority Customer complex order Tier 7 from the current level of ''above 1.350%–2.00%'' to ''above 1.350%–1.750%'' and amend Priority Customer complex order Tier 8 from the current level of ''above 2.000%–2.750%'' to ''above 1.750%–2.750%'' does not impose an undue burden on competition because it will not place any category of Exchange participant at a competitive disadvantage. Any Member who brings complex order flow to the Exchange may qualify for the rebates. The Exchange seeks to further incentivize all Members to bring a significant amount of complex volume to the Exchange in order to earn the highest range of Priority Customer complex rebates offered by the Exchange. Further, any Member may choose to qualify for the rebate program by sending complex order flow to the Exchange.

[30] Any solicited Counter-Side Orders submitted by an Electronic Access Member to trade against Agency Orders may not be for the account of a Nasdaq ISE Market Maker assigned to the options class. *See* Supplementary Material .06 to Options 3, Section 13.

Technical Amendments

The technical amendments proposed herein are non-substantive because these amendments remove redundant defined terms, capitalize a defined term, and correct a grammatical error.

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[31] and Rule 19b–4(f)(2)[32] 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 email to *rule-comments@sec.gov*. Please include File Number SR–ISE–2022–16 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–2022–16. 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 (*http://www.sec.gov/*

[31] 15 U.S.C. 78s(b)(3)(A)(ii).

[32] 17 CFR 240.19b–4(f)(2).

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–2022–16 and should be submitted on or before September 20, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[33]

J. Matthew DeLesDernier,

Deputy Secretary.

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[33] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33–11095; 34–95597/August 25, 2022]

Order Making Fiscal Year 2023 Annual Adjustments to Registration Fee Rates

I. Background

The Commission collects fees under various provisions of the securities laws. Section 6(b) of the Securities Act of 1933 (''Securities Act'') requires the Commission to collect fees from issuers on the registration of securities.[1] Section 13(e) of the Securities Exchange Act of 1934 (''Exchange Act'') requires the Commission to collect fees on specified repurchases of securities.[2] Section 14(g) of the Exchange Act requires the Commission to collect fees on specified proxy solicitations and statements in corporate control transactions.[3] These provisions require the Commission to make annual adjustments to the applicable fee rates.

II. Fiscal Year 2023 Annual Adjustment to Fee Rates

Section 6(b)(2) of the Securities Act requires the Commission to make an annual adjustment to the fee rate applicable under Section 6(b).[4] The annual adjustment to the fee rate under Section 6(b) of the Securities Act also sets the annual adjustment to the fee rates under Sections 13(e) and 14(g) of the Exchange Act.[5]

Section 6(b)(2) sets forth the method for determining the annual adjustment to the fee rate under Section 6(b) for fiscal year 2023. Specifically, the Commission must adjust the fee rate under Section 6(b) to a ''rate that, when applied to the baseline estimate of the aggregate maximum offering prices for [fiscal year 2023], is reasonably likely to produce aggregate fee collections under [Section 6(b)] that are equal to the target fee collection amount for [fiscal year 2023].'' That is, the adjusted rate is determined by dividing the ''target fee collection amount'' for fiscal year 2023 by the ''baseline estimate of the aggregate maximum offering prices'' for fiscal year 2023.

III. Target Fee Collection Amount for FY 2023

The statutory ''target fee collection amount'' for fiscal year 2021 and ''each fiscal year thereafter'' is ''an amount that is equal to the target fee collection amount for the prior fiscal year, adjusted by the rate of inflation.''[6] Consistent with the fiscal year 2021 calculation, the Commission has determined that it will use an approach similar to one that it uses to annually adjust civil monetary penalties by the rate of inflation.[7] Under this approach, the Commission will use the year-over-year change, rounded to five decimal places, in the Consumer Price Index for All Urban Consumers (''CPI–U''), not seasonally adjusted, in calculating the target fee collection amount, which is then rounded to the nearest whole dollar. The calculation for the fiscal year 2023 target fee collection amount is described in more detail below.

The most recent CPI–U index value, not seasonally adjusted, available for use by the Commission at the time this fee rate update was prepared was for June 2022. This value is 296.311.[8] The CPI–U index value, not seasonally adjusted, for June 2021 is 271.696.[9] Dividing the June 2022 value by the June 2021 value and rounding to five decimal places yields a multiplier value of 1.09060. Multiplying the fiscal year 2022 target fee collection amount of $747,806,372[10] by the multiplier value of 1.09060 and rounding to the nearest whole dollar yields a fiscal year 2023 target fee collection amount of $815,557,629.

Section 6(b)(6)(B) defines the ''baseline estimate of the aggregate maximum offering prices'' for fiscal year 2023 as ''the baseline estimate of the aggregate maximum offering price at which securities are proposed to be offered pursuant to registration statements filed with the Commission during [fiscal year 2023] as determined by the Commission, after consultation with the Congressional Budget Office and the Office of Management and Budget . . . .''

To make the baseline estimate of the aggregate maximum offering prices for fiscal year 2023, the Commission is using the methodology it has used in prior fiscal years and that was developed in consultation with the Congressional Budget Office and OMB.[11] Using this methodology, the Commission determines the ''baseline estimate of the aggregate maximum

[1] 15 U.S.C. 77f(b).

[2] 15 U.S.C. 78m(e).

[3] 15 U.S.C. 78n(g).

[4] 15 U.S.C. 77f(b)(2). The annual adjustments are designed to adjust the fee rate in a given fiscal year so that, when applied to the aggregate maximum offering prices at which securities are proposed to be offered for the fiscal year, it is reasonably likely to produce total fee collections under Section 6(b) equal to the ''target fee collection amount'' required by Section 6(b)(6)(A) for that fiscal year.

[5] 15 U.S.C. 78m(e)(4) and 15 U.S.C. 78n(g)(4).

[6] 15 U.S.C. 77f(b)(6)(A).

[7] The Commission annually adjusts for inflation the civil monetary penalties that can be imposed under the statutes administered by Commission, as required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, pursuant to guidance from the Office of Management and Budget (''OMB''). See OMB December 16, 2019, Memorandum for the Heads of Executive Departments and Agencies,'' M–20–05, on ''Implementation of Penalty Inflation Adjustments for 2020, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.''

[8] This value was announced on July 13, 2022. See *https://www.bls.gov/news.release/archives/cpi_07132022.htm.*

[9] See ''Table 1, Consumer Price Index for All Urban Consumers (CPI–U): U.S. city average, by expenditure category, June 2022'' in the announcement referenced above.

[10] See 86 FR 47696, published August 26, 2021. (*https://www.federalregister.gov/documents/2021/08/26/2021-18402/order-making-fiscal-year-2022-annual-adjustments-to-registration-fee-rates*).

[11] Appendix A explains how we determined the ''baseline estimate of the aggregate maximum offering prices'' for fiscal year 2023 using our methodology, and then shows the arithmetical process of calculating the fiscal year 2023 annual adjustment based on that estimate. The appendix includes the data used by the Commission in making its ''baseline estimate of the aggregate maximum offering prices'' for fiscal year 2023.