The Exchange believes the proposed MPID fee structure, including waiver of the MPID fees, will not result in any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because there will be no cost for Members to utilize MPIDs across their firm and business lines. The Exchange believes waiving such fees will not impose any burden on intra-market competition because this will provide an incentive for market participants to register and become Members of the Exchange prior to launch. This in turn should provide the Exchange with potential order flow and liquidity providers as it begins operations, which may benefit all market participants of the Exchange.

The Exchange believes the proposed technical support request fee will not result in any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because it will be assessed equally to all Members and non-Members who request technical support at the proposed hourly rate. Furthermore, Members and non-Members are not required to use the service; instead, the Exchange proposes to offer this services as a convenience to all Members and non-Members. The Exchange believes the proposed fee will not impose any burden on intra-market competition because it will permit both Members and non-Members to request the use of the Exchange's on-site data center personnel as technical support and as a convenience in order to test or otherwise assess the user's connectivity to the Exchange via its data centers. The proposed fee is within the range of the fee charged by the Exchange's affiliated markets for the same service.[21]

Inter-Market Competition

The Exchange believes that the proposed changes will not result in any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act. As discussed above, market participants are not forced to connect to and trade on all exchanges. The Exchange believes that the proposed pass-through of external connectivity fees, MPID fee structure, and technical support request fee will not cause any burden on inter-market competition because none of these changes impact other exchanges' ability to compete.

Accordingly, the Exchange does not believe its proposed fee changes impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

Written comments were neither solicited nor 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,[22] and Rule 19b–4(f)(2)[23] 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 necessary or appropriate in the public interest, for the protection of investors, or 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–SAPPHIRE–2024–16 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–SAPPHIRE–2024–16. 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 (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–SAPPHIRE–2024–16 and should be submitted on or before September 12, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2024–18789 Filed 8–21–24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100753; File No. SR–ISE–2024–38]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 7, Section 3

August 16, 2024.

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, 2024, 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

connectivity fees to Participants and non-Participants that are assessed to BOX by these third-party external vendors on behalf of a Participant or non-Participant. Connectivity fees can include one-time set-up fees, monthly charges, and other fees charged by the third-party vendor in exchange for the services provided to the market participant.'').

[21] *See supra* note 12.

[22] 15 U.S.C. 78s(b)(3)(A)(ii).

[23] 17 CFR 240.19b–4(f)(2).

[24] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

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.[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

ISE proposes to amend the Exchange's Pricing Schedule at Options 7, Section 3, Regular Order Fees and Rebates, to increase the Priority Customer [4] Select Symbol Taker Fee from $0.37 to $0.39 per contract.

Today, the Exchange assesses a Select Symbol Maker Fee of $0.18 per contract in regular orders to all Non-Priority Customers.[5] Priority Customers are not assessed a Select Symbol Maker Fee in regular orders. Additionally, today, ISE assesses Market Makers [6] a $0.45 per contract Select Symbol Taker Fee in regular orders. Non-Nasdaq ISE Market Makers (FarMMs),[7] Firm Proprietary [8]/Broker Dealers,[9] and Professional Customers [10] are assessed a $0.46 per contract Select Symbol Taker Fee in regular orders. Priority Customers are assessed a $0.37 per contract Select Symbol Taker Fee in regular orders.

At this time, the Exchange proposes to increase the Priority Customer Select Symbol Taker Fee from $0.37 to $0.39 per contract in regular orders. While the Exchange is increasing the Priority Customer Select Symbol Taker Fee, it will remain the lowest Select Symbol Taker Fee assessed by ISE as compared to Select Symbol Taker Fees assessed to other market participants.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[11] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[12] 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 possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .'' [13]

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.'' [14]

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 seventeen 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.

The Exchange's proposal to increase the Priority Customer Select Symbol Taker Fee from $0.37 to $0.39 per contract for regular orders is reasonable because its taker fees remain competitive and lower than other options exchanges.[15] Further, while the Taker Fee will be higher for Priority Customers, the Exchange believes that market participants will continue to be incentivized to send Priority Customer order flow to ISE because it will remain the lowest Select Symbol Taker Fee

[3] On July 31, 2024, ISE filed SR–ISE–2024–37 and designated it effective on August 1, 2024. On August 9, 2024, the Exchange withdrew SR–ISE–2024–37 and filed this rule change.

[4] 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).

[5] ''Non-Priority Customers'' include Market Makers, Non-Nasdaq ISE Market Makers (FarMMs), Firm Proprietary/Broker-Dealers, and Professional Customers. *See* Options 7, Section 1(c).

[6] The term ''Market Makers'' refers to ''Competitive Market Makers'' and ''Primary Market Makers'' collectively. *See* Options 1, Section 1(a)(21).

[7] 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).

[8] A ''Firm Proprietary'' order is an order submitted by a member for its own proprietary account. *See* Options 7, Section 1(c).

[9] 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).

[10] 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).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4) and (5).

[13] *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)).

[14] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[15] For example, Cboe C2 Exchange, Inc. (''C2'') assesses Public Customers a $0.43 per contract fee for removing liquidity in Penny Classes. *See* C2 Fee Schedule at: *https://www.cboe.com/us/options/membership/fee_schedule/ctwo.* In addition, MIAX Emerald, LLC (''MIAX Emerald'') assesses Priority Customers a $0.50 per contract taker fee in Penny Classes. *See* MIAX Emerald Fee Schedule at: *https://www.miaxglobal.com/sites/default/files/fee_schedule-files/MIAX_Emerald_Fee_Schedule_08052024.pdf.*

assessed by ISE as compared to Select Symbol Taker Fees assessed to other market participants.[16]

The Exchange's proposal to increase the Priority Customer Select Symbol Taker Fee from $0.37 to $0.39 per contract for regular orders is equitable and not discriminatory because Priority Customers would continue to be assessed the lowest Select Symbol Taker Fee on ISE among market participants. 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.

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 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.

In terms of intra-market competition, the Exchange does not believe that this proposal will place any category of market participant at a competitive disadvantage. The Exchange's proposal to increase the Priority Customer Select Symbol Taker Fee from $0.37 to $0.39 per contract in regular orders does not impose an undue burden on competition because Priority Customers would continue to be assessed the lowest Select Symbol Taker Fee on ISE among market participants. 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.

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 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–2024–38 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–2024–38. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–ISE–2024–38 and should be submitted on or before September 12, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2024–18786 Filed 8–21–24; 8:45 am]

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[16] Today, ISE assesses Market Makers a $0.45 per contract Select Symbol Taker Fee. ISE assesses Non-Nasdaq ISE Market Makers (FarMMs), Firm Proprietary/Broker Dealers, and Professional Customers a $.46 per contract Select Symbol Taker Fee in regular orders.

[17] 15 U.S.C. 78s(b)(3)(A)(ii).

[18] 17 CFR 200.30–3(a)(12).