radiological risk posed by TMI when compared to operating reactors. The reduced overall risk to the public at decommissioning power plants does not warrant that the licensee be required to carry full operating reactor insurance coverage after the requisite spent fuel cooling period has elapsed following final reactor shut down. The licensee's proposed financial protection limits will maintain a level of liability insurance coverage commensurate with the risk to the public. These changes are consistent with previous NRC policy as discussed in SECY–00–0145 and exemptions approved for other decommissioning reactors. Thus, the underlying purpose of the regulations will not be adversely affected by the reductions in insurance coverage. Accordingly, an exemption from participation in the secondary insurance pool (for TMI-1) and a reduction in the primary insurance to $100 million (for TMI-1 and TMI-2), a value more in line with the potential consequences of accidents, would be in the public interest in that this ensures that there will be adequate funds to address any of those consequences and helps to ensure the safe and timely decommissioning of the reactor.

Therefore, the NRC staff has concluded that the requested exemptions from 10 CFR 140.11(a)(4) at the requested effective date of 16 months after the permanent cessation of power operations, are in the public interest.

C. Environmental Considerations

The NRC's approval of an exemption from insurance or indemnity requirements belongs to a category of actions that the Commission, by rule or regulation, has declared to be a categorical exclusion after first finding that the category of actions does not individually or cumulatively have a significant effect on the human environment. Specifically, the exemption is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement in accordance with 10 CFR 51.22(c)(25).

Under 10 CFR 51.22(c)(25), granting of an exemption from the requirements of any regulation of Chapter I to 10 CFR is a categorical exclusion provided that: (i) There is no significant hazards consideration; (ii) there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite; (iii) there is no significant increase in individual or cumulative public or occupational radiation exposure; (iv) there is no significant construction impact; (v) there is no significant increase in the potential for or consequences from radiological accidents; and (vi) the requirements from which an exemption is sought involve surety, insurance, or indemnity requirements.

As the Director, Division of Decommissioning, Uranium Recovery, and Waste Programs, Office of Nuclear Material Safety and Safeguards, I have determined that approval of the exemption request involves no significant hazards consideration, as defined in 10 CFR 50.92, because reducing a licensee's offsite liability requirements at TMI does not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The exempted financial protection regulation is unrelated to the operation of TMI or site activities. Accordingly, there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite and no significant increase in individual or cumulative public or occupational radiation exposure. The exempted regulation is not associated with construction so there is no significant construction impact. The exempted regulation does not concern the source term (*i.e.,* potential amount of radiation in an accident) nor any activities conducted at the site. Therefore, there is no significant increase in the potential for, or consequences of, a radiological accident. In addition, there would be no significant impacts to biota, water resources, historic properties, cultural resources, or socioeconomic conditions in the region resulting from issuance of the requested exemptions. The requirement for offsite liability insurance involves surety, insurance, or indemnity matters only.

Therefore, pursuant to 10 CFR 51.22(b) and 51.22(c)(25), no environmental impact statement or environmental assessment need be prepared in connection with the approval of this exemption request.

IV. Conclusions

Accordingly, the Commission has determined that, pursuant to 10 CFR 140.8, the requested exemptions are authorized by law and are otherwise in the public interest. Therefore, the Commission hereby grants Exelon and TMI-2 Solutions exemptions from the requirements of 10 CFR 140.11(a)(4) for the TMI site. TMI-1 permanently ceased power operations on September 20, 2019. The exemptions from 10 CFR 140.11(a)(4) permit TMI-1 to reduce the required level of primary financial protection from $450 million to $100 million and to withdraw from participation in the secondary layer of financial protection 16 months after the permanent cessation of power operations. Further, the exemptions permit TMI-2 relief from the requirements to maintain primary offsite liability insurance for ENOs at a level above $100 million.

The exemptions are effective as of 16 months after permanent cessation of power operations.

Dated, this 9th day of March, 2021.

For the Nuclear Regulatory Commission.

Patricia K. Holahan,

Director, Division of Decommissioning, Uranium Recovery, and Waste Programs, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2021–05396 Filed 3–15–21; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91290; File No. SR–ICEEU–2021–007]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the ICE Clear Europe Futures and Options Risk Policy and Futures and Options Risk Procedures and Retirement of the Futures and Options Concentration Charge Policy

March 10, 2021.

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 March 3, 2021, ICE Clear Europe Limited (''ICE Clear Europe'' or the ''Clearing House'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule changes described in Items I, II, and III below, which Items have been prepared primarily by ICE Clear Europe. ICE Clear Europe filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(4)(ii)[4] thereunder, such that the proposed rule was immediately effective upon filing with the Commission. The Commission is publishing this notice to solicit

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

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(a).

[4] 17 CFR 240.19b–4(f)(4)(ii).

comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The principal purpose of the proposed amendments is for ICE Clear Europe to (i) modify its Futures and Options Risk Policy (the ''F&O Risk Policy'') and Futures and Options Risk Procedures (the ''F&O Risk Procedures'' or the ''Procedures'') to update certain aspects of the F&O initial margin methodology, including with respect to the capital to margin ratio, use of delivery margin, calculation of net liquidating value and certain buffers, and (ii) retire its Futures and Options Concentration Charge Policy (''F&O Concentration Charge Policy'') once such proposed amendment are made, as such policy would be made redundant as a result of the proposed amendments.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICE Clear Europe 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. ICE Clear Europe has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

ICE Clear Europe is proposing to revise the F&O Policy to remove the description of the capital to margin ratio as a basis for requesting additional initial margin or a reduction in positions to reduce the required initial margin level.

ICE Clear Europe is also proposing to amend its F&O Procedures to (i) update certain processes, escalations and controls with respect to the review of the IRM margin rate parameters, (ii) update the existing descriptions of review and testing processes for additional margin calculation methodologies, (iii) add a description of the Clearing House's use of delivery margin, net liquidating value, intraday buffers, overnight buffers, and ad hoc buffers as margin calculation methodologies and (iv) make various other drafting clarifications and improvements. These proposed amendments would result in the retiring of ICE Clear Europe's F&O Concentration Charge Policy as the F&O Risk Policy and F&O Risk Procedures (as amended) would render such Future and Options Concentration Charge Policy redundant.

I. Futures and Options Risk Policy

The Policy would be revised to remove section 2.2.6, which describes the capital to margin ratio, from the additional margin requirements discussion. The description is being removed as the ratio is not in itself necessarily the basis of additional margin requirements and is addressed in other existing ICE Clear Europe policies and procedures. This amendment does not reflect a change in Clearing House practice or margin methodology. Certain minor non-substantive typographical updates would also be made to the Policy.

II. F&O Risk Procedures

IRM Margin Rate Parameters

Amendments to the Procedures would update the standard parameters for daily calculation of the calibrated IM rate (the so-called ''Autopilot'' or ''AP'' rate) to reference inter-contract volatility spreads. The amendments would update and clarify certain processes for the routine periodic review of the production margin rate (which is the actual rate used in the margin calculation generating CMs' Core IM requirements, and is typically based on the Autopilot rate). Specifically, the amendments would clarify that details of proposed parameters and margin impact along with justification for any manual overrides from the Autopilot rate would need to be approved by the CRO and the President of ICEU or their deputies. The amendments would provide that the CRD can inform exchange staff (instead of sales staff) at its discretion for information about the margin update. The amendments would also remove a process for the CRD to receive feedback on proposed parameters by sales staff or management, which the Clearing House views as unnecessary in light of the procedures for senior management approval.

Furthermore, the amendments would provide that upon review and approval of specific Senior Management Team members, the CRD would promote the rates into the risk system. The CRD would refresh the Product Report to perform a check on the rates to go live. One such check would be to ensure no cross-asset class inter-commodity spread (ICS) parameters are larger than 80%. Any correction to the promoted rates would be made at such point. The summary table of the review and promotion process for IRM margin rate parameters would be updated to reflect the Clearing House's current practices with respect to the testing and frequency of testing for such IRM margin rate parameters. Specifically, daily checks flagging any difference between production rate and AP rate using a threshold of 20% where AP is larger than production would be used. Additionally, monthly checks would flag any difference between production rate and AP rate for material parameters using a threshold of 20% relative difference where AP is larger than production scanning rate, and 20% absolute difference where production is larger than AP ICS rate.

Parameter Review and Recalibration

The amendments would clarify that exceptions driving an ad hoc review and parameter recalibration would be subject to notification to the Risk Oversight Department (''ROD'') in addition to Senior CRD (director or above) decision. This clarification would be made throughout the Procedures with respect to parameter review and recalibration.

IRM Parameterization

This section would be amended to correctly reference relevant model documentation. The summary of the review process would be updated to add that ad hoc reviews would be triggered by large deviations in the daily sensitivity report.

Additional Initial Margin

Amendments to the section of the Procedures relating to concentration charges would update the testing frequency for product review and group mapping requirements from at least annually to monthly for a subset of products, and otherwise quarterly.

With respect to the Stress Margin or Stress Loss Charge (''SLC'') additional Initial Margin calculation methodology, the Procedures would update the testing and frequency with respect to the SLC process from no specific test to provide for Daily Cover 1 and Cover 2 tests where the largest uncollateralized stress loss of a single member and pair of members, respectively, is determined. Any SLC top up would be called from the member. Furthermore, with respect to the SLC process for stress scenarios and proxy mapping, the amendments would update the frequency of review to provide that PCA EVT scenarios (*i.e.,* those combining principal component analysis and extreme value theory)

would be reviewed at least quarterly. Monthly testing with respect to PCA EVT monitoring would be reported to the MOC.

The amendments would update the description of F&O guarantee fund (GF) requirements to clarify that GF size corresponds to the maximum of the largest cover 2 loss over the last month or the average cover two losses over the last three months plus one standard deviation. This change conforms to current practice and does not reflect a change in methodology.

Regarding the Clearing House's Wrong-Way Risk (WWR) Requirements, the amendments would update the testing/frequency of the WWR process to add that index weights would be reviewed quarterly.

With respect to the EMIR add-on calculation methodology, the testing frequency would be updated to provide for monthly backtesting on benchmark products using a one-day margin period of risk and a daily check for benchmark products using a two-day margin period of risk. Ad hoc review would be dependent on test results, margin behavior during high volatility periods, and market expert feedback, rather than being only applicable for H and F accounts.

The updates to the procedures would add a new section addressing ''Delivery Margins'', which would add a description of the Clearing House's existing use of delivery margins to mitigate any payment or delivery risks during the delivery timeline of physically delivered products. Such delivery margins include: (i) Delivery margin, which is designed to cover any price movement on the product in delivery, (ii) buyer security, which is the notional value of the prompt portion of the contract in delivery, (iii) seller security, which is the additional charge on the seller to cover the situation where the seller is unable to deliver agreed product, and (iv) contingent variation margin, collected against difference between spot price and end of day settlement price between the last trading day and collection of buyer's security. The amended Procedures would also include a summary table that describes details of the delivery margin, buyer/seller security, and contingent variation margin.

The amendments to the Procedures would also add a new section describing the Clearing House's existing practices regarding net liquidating value of certain ''equity-style'' margined F&O options. For such options, the option premium must be paid/received at inception of the trade and the daily option value held as a credit or debit against the margin account for the remainder of the open position. The level of NLV credit/debit would be recalculated each day according to the option settlement price and any top up would be called the following day. A summary table of the details of the NLV determination would be included.

The updates to the Procedures would add a new section regarding ''Intraday and Overnight Buffer'', which would summarize the existing ability of Clearing Members to post an additional buffer each day to offset intraday margin shortfall. The provisions would reference existing descriptions of intraday and overnight buffers in the Procedures. A summary table of the intraday and overnight buffers would also be included.

Finally, the updates to the Procedures would add a new section describing ''Ad-Hoc Buffer'', which would state that Clearing Members may be requested to post additional buffers for various risks not otherwise covered in the Procedures. Such requirements would be set by the Risk Senior Management and the Credit Risk team. A summary table of the ad-hoc buffer would be included. The amendments are intended to describe more clearly an existing authority of the Clearing House.

Other General Drafting Clarifications and Improvements

The amendments would define previously undefined terms such as ''CRO'' (Chief Risk Officer). Various typographical and similar corrections would also be made throughout the Procedures.

(b) Statutory Basis

ICE Clear Europe believes that the proposed amendments to the F&O Risk Policy and the F&O Risk Procedures are consistent with the requirements of Section 17A of the Act[5] and the regulations thereunder applicable to it. In particular, Section 17A(b)(3)(F) of the Act[6] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible, and the protection of investors and the public interest.

The proposed changes to the F&O Procedures and F&O Policy are designed to strengthen ICE Clear Europe's tools to manage the risk of losses resulting from defaulting Clearing Members' portfolios. The amendments would update and clarify the processes, controls and escalations with respect to the testing and reviewing Clearing Members' Initial Margin requirements and related parameters. The amendments would also more clearly describe certain types of additional margin and calculation methodologies, and clarify the procedures for the testing and review thereof. Through better managing risks in default scenarios and promoting market stability, the proposed amendments would promote the stability of the Clearing House and the prompt and accurate clearance and settlement of cleared contracts. The enhanced risk management is therefore also generally consistent with the protection of investors and the public interest in the safe operation of the Clearing House. (ICE Clear Europe would not expect the amendments to affect the safeguarding of securities and funds in ICE Clear Europe's custody or control or for which it is responsible.) Accordingly, the amendments satisfy the requirements of Section 17A(b)(3)(F).[7]

The amendments are also consistent with relevant provisions of Rule 17Ad–22. Rule 17Ad–22(e)(3)(i)[8] requires clearing agencies to maintain a sound risk management framework that identifies, measures, monitors and manages the range of risks that it faces. The amendments to the F&O Risk Policy and the F&O Risk Procedures are intended to better reflect margin and guaranty fund methodologies that calibrate resources held by ICE Clear Europe to the risks faced by the Clearing House, through improvements to the description and review and testing of relevant methodologies. The amendments will thus strengthen the management of default risks, and risk management more generally. In ICE Clear Europe's view, the amendments are therefore consistent with the requirements of Rule 17Ad–22(e)(3)(i).[9]

Rule 17Ad–22(e)(6)(i)[10] requires a covered clearing agency to consider and produce margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market. The proposed amendments update the existing descriptions of calculation methodologies for additional margin to provide further detail, including with respect to ongoing testing and review processes. The

[5] 15 U.S.C. 78q–1.

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] 17 CFR 240.17 Ad–22(e)(3)(i).

[9] 17 CFR 240.17 Ad–22(e)(3)(i).

[10] 17 CFR 240.17Ad–22(e)(6)(i).

amendments further add a description of the Clearing House's existing use of delivery margin, net liquidating value, intraday buffers, overnight buffers, and ad hoc buffers. These amendments thus enhance the clarity of ICE Clear Europe's overall margin framework and documentation, and facilitate compliance with the requirements of Rule 17Ad–22(e)(6)(i).[11]

Rule 17Ad–22(e)(6)(vi)(A) and (B)[12] requires that a clearing agency cover its credit exposures to its participants by establishing a risk-based margin system that is monitored by management and regularly reviewed by ''(A) [c]onducting backtests of its margin model at least once each day using standard predetermined parameters and assumptions'' and ''(B) [c]onducting a sensitivity analysis of its margin model and a review of its parameters and assumptions for backtesting on at least a monthly basis . . .'' The proposed amendments describing the EMIR margin add-on methodology provide for monthly backtesting on 1-day margin period of risk benchmark products using predetermined parameters and a daily check for other products. In ICE Clear Europe's view, these amendments are therefore consistent with the requirements of Rule 17Ad–22(e)(6)(vi)(A) and (B).[13]

Rule 17Ad–22(e)(4)(v)[14] requires a covered clearing agency to maintain financial resources that would at a minimum enable it to cover a wide range of foreseeable stress scenarios that include, but are not limited to, the default of the two participant families that would potentially cause the largest aggregate credit exposure for the covered clearing agency in extreme but plausible market conditions. The amendments to the Procedures are consistent with this requirement by providing that the GF size corresponds to the maximum of the largest cover 2 loss over the last month or the average cover 2 two losses over the last three months plus one standard deviation. In ICE Clear Europe's view, these amendments are therefore consistent with the requirements of Rule 17Ad–22(e)(4)(v).[15]

Rule 17Ad–22(e)(2)[16] requires clearing agencies to establish reasonably designed policies and procedures to provide for governance arrangements that are clear and transparent and specify clear and direct lines of responsibility. The proposed amendments to the Procedures would update the processes for the review of the relevant parameters to clarify the role of the CRD and deputies of the Chief Risk Officer and the President of the Clearing House. They would also describe for the role of Senior Management Team members and the Risk Oversight Department in this process. In ICE Clear Europe's view, the amendments are therefore consistent with the requirements of Rule 17Ad–22(e)(2).[17]

(B) Clearing Agency's Statement on Burden on Competition

ICE Clear Europe does not believe the proposed amendments would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purposes of the Act. The amendments are being adopted to update and clarify the F&O Risk Policy and the F&O Risk Procedures and will apply to all F&O Clearing Members. The proposed amendments are not expected to materially change F&O Guaranty Fund Contributions or margin requirements for F&O Clearing Members. ICE Clear Europe does not believe the amendments would affect the costs of clearing, the ability to market participants to access clearing, or the market for clearing services generally. Therefore, ICE Clear Europe does not believe the proposed rule change imposes any burden on competition that is inappropriate in furtherance of the purposes of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed amendments have not been solicited or received by ICE Clear Europe. ICE Clear Europe will notify the Commission of any written comments received with respect to the proposed rule change.

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) of the Act[18] and paragraph (f) of Rule 19b–4[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 necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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–ICEEU–2021–007 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–ICEEU–2021–007. 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/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 such filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's website at *https://www.theice.com/notices/Notices.shtml?regulatoryFilings.*

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–ICEEU–2021–007

[11] 17 CFR 240.17Ad–22(e)(6)(i).
[12] 17 CFR 240.17Ad–22(e)(6)(vi)(A) and (B).
[13] 17 CFR 240.17Ad–22(e)(6)(vi)(A) and (B).
[14] 17 CFR 240.17 Ad–22(e)(4)(v).
[15] 17 CFR 240.17 Ad–22(e)(4)(v).
[16] 17 CFR 240.17 Ad–22(e)(2).
[17] 17 CFR 240.17 Ad–22(e)(2).
[18] 15 U.S.C. 78s(b)(3)(A).
[19] 17 CFR 240.19b–4(f).

and should be submitted on or before April 6, 2021.

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

J. Mathew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–05339 Filed 3–15–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91295; File No. SR–ISE–2021–03]

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, Section 3

March 10, 2021.

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 March 2, 2021, Nasdaq ISE, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''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, Section 3 (Regular Order Fees and Rebates), as described further below.

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, Section 3 (Regular Order Fees and Rebates) to: (i) Decrease the Priority Customer[3] taker fee in Select Symbols,[4] and (ii) increase the Non-Priority Customer[5] maker fee in Select Symbols.

The Exchange initially filed the proposed pricing changes on March 1, 2021 (SR–ISE–2021–02). On March 2, 2021, the Exchange withdrew that filing and submitted this filing.

Today, Priority Customers are charged a taker fee of $0.41 per contract for regular orders in Select Symbols. The Exchange now proposes to decrease this fee to $0.37 per contract for Priority Customers.

Today, all Non-Priority Customers are charged a maker fee of $0.11 per contract for regular orders in Select Symbols. The Exchange now proposes to increase this fee to $0.18 per contract for all Non-Priority Customers.[6]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[8] 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'. . . .'' [9]

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.'' [10]

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 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. As such, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

[20] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] 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).

[4] ''Select Symbols'' are options overlying all symbols listed on the Nasdaq ISE that are in the Penny Interval Program.

[5] ''Non-Priority Customers'' include Market Makers, Non-Nasdaq ISE Market Makers, Firm Proprietary/Broker Dealers, and Professional Customers.

[6] The Exchange notes that under this proposal, Market Makers that qualify for Market Maker Plus in Select Symbols will continue to receive the applicable Market Maker Plus rebates in Select Symbols set forth in note 5 of Options 7, Section 3, and will not pay the proposed $0.18 per contract maker fee.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4) and (5).

[9] *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)).

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