its activities in all relevant jurisdictions.[10]

The proposed rule change would help provide a well-founded, clear, transparent, and enforceable legal basis for ICC's clearance of SES contracts on the Kingdom of Morocco and the Federal Republic of Nigeria. By amending Rule 26D–102 to add both the Kingdom of Morocco and the Federal Republic of Nigeria to the list of specific Eligible SES Reference Entities to be cleared by ICC, the proposed rule change would help to ensure that ICC can clear SES contracts on those countries pursuant to its existing rules in Subchapter 26D. The revised Subchapter 26D would provide a well-founded, clear, transparent, and enforceable legal basis for ICC to clear these contracts, consistent with the requirements of Rule 17Ad–22(e)(1).[11]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and in particular, with the requirements of section 17A(b)(3)(F) of the Act [12] and Rule 17Ad–22(e)(1) thereunder.[13]

It is therefore ordered pursuant to section 19(b)(2) of the Act [14] that the proposed rule change (SR–ICC–2023–014), be, and hereby is, approved.[15]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–27275 Filed 12–12–23; 8:45 am]

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[10] 17 CFR 240.17Ad–22(e)(1).

[11] 17 CFR 240.17Ad–22(e)(1).

[12] 15 U.S.C. 78q–1(b)(3)(F).

[13] 17 CFR 240.17Ad–22(e)(1).

[14] 15 U.S.C. 78s(b)(2).

[15] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99116; File No. SR–C2–2023–024]

Self-Regulatory Organizations; Cboe C2 Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Amend Its Fees Schedule

December 7, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 1, 2023, Cboe C2 Exchange, Inc. (the ''Exchange'' or ''C2'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III 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

Cboe C2 Exchange, Inc. (the ''Exchange'' or ''C2'') proposes to amend its Fee Schedule. The text of the proposed rule change is in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/options/regulation/rule_filings/ctwo/*), at the Exchange's Office of the Secretary, 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.

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

[2] 17 CFR 240.19b–4.

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

1. Purpose

The Exchange proposes to amend its Fee Schedule, effective December 1, 2023.

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 17 options venues to which market participants may direct their order flow. Based on publicly available information, no single options exchange has more than approximately 16% of the market share and currently the Exchange represents approximately 3% of the market share.[3] Thus, in such a low-concentrated and highly competitive market, no single options exchange, including the Exchange, possesses significant pricing power in the execution of option order flow. The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain the Exchange's transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

Fee Code Updates

First, the Exchange proposes to amend the transaction fee for Public Customer orders in AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF that remove liquidity. Currently, public customer orders in equity, multiply-listed index, ETF and ETN penny options classes (except SPY, AAPL, QQQ, IWM and SLV) that remove liquidity are assessed a standard transaction fee of $0.43 per contract and yield fee code ''PC''. The Exchange proposes to remove orders in AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF from fee code PC and, instead, assess fee code ''SC'' for Public Customer orders in AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF that remove liquidity. Fee code SC is currently appended to Public Customer orders in SPY, AAPL, QQQ, IWM and

[3] *See* Cboe Global Markets U.S. Options Market Volume Summary by Month (November 29, 2023), available at *https://markets.cboe.com/us/options/market_statistics/.*

SLV that remove liquidity and assesses a reduced fee (from that of fee code PC) of $0.37 per contract.

The Exchange next proposes to amend the rebate for C2 Market Maker orders in AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF that add liquidity, including if they are a National Best Bid or Offer (''NBBO'') Joiner or NBBO Setter. Currently, such C2 Market Makers orders are provided a rebate of $0.41 per contract and yield fee code ''PM''. Fee code SL is currently appended to C2 Market Maker orders in SPY, AAPL, QQQ, IWM and SLV that add liquidity and are a National Best Bid or Offer (''NBBO'') Joiner or NBBO Setter and offers a rebate of $0.31 per contract for such orders. Particularly, to qualify as a NBBO Joiner, a C2 market-maker order must improve the C2 Best Bid or Offer (''BBO'') and result in C2 joining an existing NBBO. Only the first order received that results in C2 BBO joining the NBBO at a new price level will qualify for the enhanced rebate. If C2 is at the NBBO, the order will not qualify. Alternatively, C2 Market Makers may receive the enhanced rebate if they are a NBBO Setter. To qualify as a NBBO Setter and receive the enhanced rebate, a C2 Market Maker order must set the NBBO. The Exchange now proposes to add C2 Market Maker orders in AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF that add liquidity and are a National Best Bid or Offer (''NBBO'') Joiner or NBBO Setter to fee code SL. The Exchange also proposes to amend the rebate for orders yielding fee code SL, from $0.31 to $0.32. The Exchange believes assessing fee code SL and the corresponding enhanced rebate for C2 Market Makers in AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF that are NBBO Joiners or Setters will continue to incentivize liquidity providers to provide more aggressively priced liquidity in AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF options. Further, the Exchange believes that the increased rebate for orders yielding fee code SL will also incentivize liquidity providers to provide more aggressively priced liquidity in SPY, AAPL, QQQ, IWM and SLV options.

The Exchange next proposes to amend the rebate for C2 Market Maker orders in AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF that add liquidity. As noted above, currently, C2 Market Makers orders in equity, multiply-listed index, ETF and ETN penny options classes (except SPY, AAPL, QQQ, IWM and SLV) that add liquidity are provided a rebate of $0.41 per contract and yield fee code ''PM''. The Exchange proposes to remove orders in AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF from fee code PM and, instead, assess existing fee code ''SM'' for C2 Market Maker orders in AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF. Fee code SM is currently appended to C2 Market Maker orders in SPY, AAPL, QQQ, IWM and SLV that add liquidity and offer a reduced rebate (from that of fee code PM) of $0.20 per contract.

The Exchange also proposes to amend the rebate for non-Market Maker, non-Customer orders in AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF that add liquidity. Currently, non-Market Maker, non-Customer orders (*i.e.,* Professional Customer, Firm, Broker/Dealer, non-C2 Market Maker, JBO, etc.) in equity, multiply-listed index, ETF and ETN penny options classes (except SPY, AAPL, QQQ, IWM and SLV) that add liquidity are provided a rebate of $0.36 per contract and yield fee code ''PN''. The Exchange proposes to remove orders in AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF from fee code PN and, instead, assess existing fee code ''SN'' on non-Market Maker, non-Customer orders in AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF that add liquidity. Fee code SN is currently appended to such orders in SPY, AAPL, QQQ, IWM and SLV and assesses a reduced rebate (from that of fee code PN) of $0.20 per contract.

The Exchange also proposes to add AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF to the table in the Fee Schedule that currently sets forth SPY, AAPL, QQQ, IWM and SLV-specific pricing. Like with SPY, AAPL, QQQ, IWM and SLV, the Exchange also proposes to clarify that the first transaction fee table, which does not apply to RUT, DJX, SPY, AAPL, QQQ, IWM and SLV, also does not apply to AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF. The Exchange notes that transaction fees and rebates that apply to (1) Public Customer orders in AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF that add liquidity (existing fee code ''PY'') (2) C2 Market Maker orders in AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF that remove liquidity (existing fee code ''PR''), (3) non-Market Maker, non-Customer orders in AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF that remove liquidity (existing fee code ''PP), (4) orders in AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF that trade at the open (existing fee code ''OO'') and (5) resting orders in AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF that trade with resting complex orders (existing fee code ''CA'') are not changing, nor are the associated fee codes.

Market Maker Volume Tiers

The Exchange also proposes to amend Footnote 1 (Market Maker Volume Tiers), applicable to qualifying C2 Market Maker orders yielding fee code SM. Pursuant to Footnote 1 of the Fee Schedule, the Exchange currently offers two Market Maker Volume Tiers, which provide enhanced rebates between $0.26 and $0.30 per contract for qualifying Market Maker orders yielding fee code SM where a TPHTPH [sic] meets required criteria. Specifically, Tier 1 provides an enhanced rebate of $0.26 per contract where a TPH: (1) has an ADAV [4] in Market-Maker orders in SPY, AAPL, QQQ, IWM and SLV (*i.e.,* yielding fee codes SM or SL) greater than or equal to 50,000 contracts; or (2) has a Step-Up ADAV [5] in Market-Maker orders in SPY, AAPL, QQQ, IWM and SLV (*i.e.,* yielding fee codes SM or SL) greater than or equal to 15,000 contracts from March 2021. Tier 2 provides a higher rebate of $0.30 per contract where a TPH meets the more stringent criteria of having an ADAV in Market-Maker orders in SPY, AAPL, QQQ, IWM and SLV (*i.e.,* yielding fee codes SM or SL) greater than or equal to 130,000 contracts.

The Exchange proposes to amend the required criteria for Tiers 1 and 2. Specifically, the Exchange proposes to amend Tier 1 criteria to state that a TPHTPH [sic] must have (1) an ADAV in Market-Maker orders in SPY, AAPL, QQQ, IWM, SLV, AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF (*i.e.,* yielding fee codes SM or SL) greater than or equal to 0.15% of Average OCV.[6] The Exchange proposes to amend Tier 2 criteria to state that a TPHTPH [sic] must have an ADAV in Market-Maker orders in SPY, AAPL, QQQ, IWM, SLV, AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF (*i.e.,* yielding fee codes SM or SL) greater than or equal to 0.35% of Average OCV. Additionally, the Exchange proposes to change the enhanced rebate for Tier 2 from $0.30 per contract to $0.28 per contract.

The Exchange also proposes to add new Market Maker Volume Tier 3 to provide a rebate of $0.31 per contract if a TPH has an ADAV in Market-Maker orders in SPY, AAPL, QQQ, IWM, SLV,

[4] ''ADAV'' means average daily added volume calculated as the number of contracts added, per day.

[5] ''Step-Up ADAV'' means ADAV in the relevant baseline month subtracted from current ADAV.

[6] ''OCV'' means, the total equity and ETF options volume that clears in the Customer range at the Options Clearing Corporation (''OCC'') for the month for which the fees apply, excluding volume on any day that the Exchange experiences an Exchange System Disruption and on any day with a scheduled early market close.

AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF (*i.e.,* yielding fee codes SM or SL) greater than or equal to 0.60% of Average OCV. Finally, the Exchange propose to add new Market Maker Volume Tier 4 to provide an enhanced rebate of $0.32 per contract if a TPH has an ADAV in Market-Maker orders in SPY, AAPL, QQQ, IWM, SLV, AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF (*i.e.,* yielding fee codes SM or SL) greater than or equal to 0.70% of Average OCV.

The Exchange notes that other exchanges offer tiered product-specific pricing incentives.[7] The proposed changes are designed to encourage Market-Makers to increase or grow their order flow on the Exchange in AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF, which facilitates tighter spreads, signaling increased activity from other market participants, and thus ultimately contributes to deeper and more liquid markets and provides greater execution opportunities on the Exchange to the benefit of all market participants.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[8] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[9] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[10] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[11] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its TPHs and other persons using its facilities.

As described above, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. In particular, the proposed changes to Exchange execution fees and rebates for certain orders in AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF are intended to attract order flow to the Exchange by continuing to offer competitive pricing while also creating additional incentives to providing aggressively priced displayed liquidity, which the Exchange believes would enhance market quality to the benefit of all market participants.

The Exchange believes its proposed changes are reasonable as they are competitive and in line with the Exchange's current pricing for the same orders in SPY, AAPL, QQQ, IWM, and SLV. The Exchange believes that it is reasonable to reduce the transaction fee for Public Customer orders in AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF that remove liquidity because market participants will be subject to lower fees for such orders and thus may be encouraged to increase retail AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF order flow to the Exchange. The Exchange believes that it is reasonable to reduce the rebates for both C2 Market Maker and non-Market Maker, non-Customer orders in AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF that add liquidity because such market participants will still receive rebates for such orders, albeit at a lower amount, which are already in place for such orders in SPY, AAPL, QQQ, IWM and SLV. Additionally, Market Makers that are NBBO Joiners or Setters in AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF would be eligible to receive the same rebate, as amended, that is currently offered for joining or setting an NBBO in SPY, AAPL, QQQ, IWM and SLV. The Exchange believes that offering the NBBO Joiner and Setter rebate for Market Maker orders in AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF is reasonable as it is designed to continue to incentivize C2 Market Makers to improve the C2 BBO resulting in C2 joining an existing NBBO or setting a new NBBO to receive the rebate, ultimately encouraging C2 Market Makers to submit more aggressive AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF orders that will maintain tight spreads, benefitting both TPHs and public investors. Further, the Exchange believes it is reasonable to increase the current rebate for the NBBO Joiner and Setter rebate for Market Maker orders in SPY, AAPL, QQQ, IWM and SLV, as such market participants will still receive a rebate for such orders.

The Exchange also believes it is reasonable, equitable and not unfairly discriminatory to adopt pricing specific to certain orders in AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF as the Exchange already maintains the same pricing for such orders in SPY, AAPL, QQQ, IWM and SLV, as well as similar product-specific pricing for certain orders in other products, such as RUT and DJX.[12] Additionally, as noted above, other exchanges similarly provide for product-specific pricing.[13]

The Exchange also believes that it is equitable and not unfairly discriminatory to assess a lower fee for Public Customer orders in AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF as compared to other market participants because customer order flow enhances liquidity on the Exchange for the benefit of all market participants. Specifically, customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. Moreover, the options industry has a long history of providing preferential pricing to customers, and the Exchange's current Fee Schedule currently does so in many places, as do the fees structures of multiple other exchanges.[14] The Exchange notes that the proposed fee change will be applied equally to all Public Customers.

The Exchange believes it is equitable and not unfairly discriminatory to provide C2 Market-Makers that are NBBO Joiners or Setters in AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF an enhanced rebate (compared to the proposed rebate for other C2 Market-Makers) because such market participants are providing more

[7] *See, e.g.,* MIAX Pearl Fee Schedule, Section 1 Transaction Rebates/Fees, which provides for product-specific pricing for SPY, QQQ, and IWM; and Nasdaq ISE Pricing Schedule, Section 3, Footnote 5, which provides for tiered rebates for market maker IWM and QCC orders that add liquidity between $0.10 and $0.26 per contract, as well as tired rebates for market maker orders in similar, single-name options (AMZN, FB, and NVDA) between $0.15 and $0.22.

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

[9] 15 U.S.C. 78f(b)(5).

[10] *Id.*

[11] 15 U.S.C. 78f(b)(4).

[12] *See* Cboe C2 Options Exchange Fee Schedule, Transaction Fees.

[13] *See supra* note 8.

[14] *See* Cboe C2 Options Exchange Fee Schedule, Transaction Fees; *see also* BZX Options Fee Schedule, Fee Codes and Associated Fees.

aggressively priced liquidity in AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF options. Additionally, increased add volume order flow, particularly by liquidity providers, contributes to a deeper, more liquid market, which, in turn, provides for increased execution opportunities and thus overall enhanced price discovery and price improvement opportunities on the Exchange. As such, this benefits all market participants by contributing towards a robust and well-balanced market ecosystem, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection. The Exchange believes the proposed changes to the rebates for non-Market Maker, non-Customer and C2 Market Maker AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF orders are also equitable and not unfairly discriminatory because they will be applied equally to all non-market-makers, non-customers and Market-Makers, respectively.

The Exchange believes amending Market Maker Volume Tiers for C2 Market Maker orders yielding fee code SM or SL is reasonable because they provide additional opportunities for TPHs to receive enhanced rebates on qualifying orders in a manner that incentivizes increased Market Maker order flow in certain multiply-listed options on the Exchange. The Exchange believes the Market Maker Volume Tiers, as amended, are reasonable means to encourage Market Makers to increase their order flow to specific multiply-listed options on the Exchange (*i.e.,* SPY, AAPL, QQQ, IWM, SLV, AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF). The Exchange notes that increased Market Maker activity, particularly, facilitates tighter spreads and an increase in overall liquidity provider activity, both of which signal additional corresponding increase in order flow from other market participants, contributing towards a robust, well-balanced market ecosystem, particularly in multiply-listed options on the Exchange. The Exchange also believes that the amended enhanced rebate offered under Tier 2 and the proposed enhanced rebates offered under proposed Tiers 3 and 4 are reasonably based on the difficulty of satisfying the proposed tiers' criteria and ensures the proposed rebate and thresholds appropriately reflect the incremental difficulty in achieving the Market-Maker Volume Tier. The Exchange believes that the proposed enhanced rebates are also in line with the enhanced rebates currently offered by another exchange for similar products.[15] The Exchange also believes it is reasonable, equitable and not unfairly discriminatory to adopt pricing specific to certain orders in SPY, AAPL, QQQ, IWM, SLV, AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF as the Exchange already offers product-specific pricing for these orders and, and as noted above, other exchanges similarly provide for product-specific tiered pricing.[16]

The Exchange believes that the Market Maker Volume Tiers, as amended, represent an equitable allocation of fees and is not unfairly discriminatory because it applies uniformly to all Market Makers, in that all Market Makers have the opportunity to compete for and achieve the proposed tiers. The enhanced rebates will apply automatically and uniformly to all Market Makers that achieve the proposed corresponding criteria. While the Exchange has no way of knowing whether this proposed rule change would definitively result in any particular Market Maker qualifying for the proposed tiers, the Exchange believes that approximately two Market Makers will reasonably be able to achieve the amended criteria in Tier 1; approximately five Market Makers will be able to achieve the amended criteria in Tier 2; approximately two Market Makers will be able to achieve the criteria in proposed Tier 3; and approximately one Market Maker will be able to achieve the criteria in proposed Tier 4. The Exchange notes, however, that the tiers are open to any Market Maker that satisfies the tiers' criteria.

The Exchange lastly notes that it does not believe the tiers, as amended, will adversely impact any TPH's pricing. Rather, should a TPH not meet the proposed criteria, the TPH will merely not receive the enhanced rebates corresponding to the tiers, and will instead receive the standard rebate.

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 that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, as discussed above, the Exchange believes that the proposed changes will encourage the submission of additional liquidity in AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for all TPHs. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.''

The Exchange believes the proposed rule change does not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed change applies to all similarly situated TPHs equally. The proposed change to reduce the transaction fee for Public Customer orders in AMC, AMD, AMXN, HYG, PLTR, TSLA, and XLF is designed to attract additional AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF Public Customer orders that remove liquidity. As noted above, the changes to the rebates for non-Market Maker, non-Customer and C2 Market Maker AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF orders will be applied equally to all non-market-makers, non-customers and Market Makers, respectively. Further, the Exchange believes that the proposed change to increase the C2 Market Maker rebate for orders in SPY, AAPL, QQQ, and IWM and provide C2 Market-Makers that are NBBO Joiners or Setters in AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF an enhanced rebate (compared to the proposed rebate for other C2 Market-Makers) will incentivize entry on the Exchange of more aggressive SPY, AAPL, QQQ, IWM, SLV, AMC, AMD, AMZN, HYG, PLTR, TSLA, and XLF orders that will maintain tight spreads, benefitting both TPHs and public investors criteria and, as a result, provide for deeper levels of liquidity, increasing trading opportunities for other market participants, thus signaling further trading activity, ultimately incentivizing more overall order flow and improving price transparency on the Exchange. Finally, as noted above, the changes to the Market Maker Volume Tiers apply uniformly to all Market Makers, in that all Market Makers have the opportunity to compete for and achieve the proposed tiers; the enhanced rebates will apply automatically and uniformly to all Market Makers that achieve the proposed corresponding criteria.

Next, the Exchange believes the proposed rule change does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As previously discussed, the Exchange operates in a highly competitive market. TPHs have numerous alternative venues

[15] *See supra* note 8.

[16] *Id.*

that they may participate on and director their order flow, including 16 other options exchanges and off-exchange venues. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single options exchange has more than 16% of the market share.[17] Therefore, no exchange possesses significant pricing power in the execution of option order flow. Indeed, participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, 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.'' The fact that this market is competitive has also 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' . . . .''. Accordingly, the Exchange does not believe its proposed fee change imposes 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

The Exchange neither solicited nor received comments on 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. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change 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–C2–2023–024 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–C2–2023–024. 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–C2–2023–024 and should be submitted on or before January 3, 2024.

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

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–27268 Filed 12–12–23; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99104; File No. SR–ISE–2023–32]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Monthly Options Series and Amend the Nonstandard Expirations Program

December 7, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 29, 2023, 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 adopt Monthly Options Series and (ii) amend its Nonstandard Expirations Program.

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.

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[17] *See supra* note 3.

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f).

[20] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.