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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No.* SR - 2017 - * 22
Amendment No. (req. for Amendments *)

Filing by International Securities Exchange

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial *	Amendment *	Withdrawal	Section 19(b)(2) *	Section 19(b)(3)(A) *	Section 19(b)(3)(B) *
☑	☐	☐	☐	☑	☐

Pilot	Extension of Time Period for Commission Action *	Date Expires *
☐	☐	

Rule

☐ 19b-4(f)(1)	☐ 19b-4(f)(4)
☑ 19b-4(f)(2)	☐ 19b-4(f)(5)
☐ 19b-4(f)(3)	☐ 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Section 806(e)(1) *	Section 806(e)(2) *
☐	☐

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934

Section 3C(b)(2) * ☐

Exhibit 2 Sent As Paper Document ☐

Exhibit 3 Sent As Paper Document ☐

Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

Proposed rule change to amend Exchange Schedule of Fees to change the definition of net zero complex order for purposes of determining eligibility for Priority Customer complex order rebates.

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * Adrian Last Name * Griffiths
Title * Associate General Counsel
E-mail * agriffths@ise.com
Telephone * (212) 897-8176 Fax

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date 03/01/2017

By Edward S. Knight
(Name *)

(Title *)
Executive Vice President and General Counsel

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

edward.knight@nasdaq.com

Required fields are shown with yellow backgrounds and asterisks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information * Add Remove View	The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.
Exhibit 1 - Notice of Proposed Rule Change * Add Remove View	The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO] -xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)
Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies * Add Remove View	The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO] -xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)
Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications Add Remove View Exhibit Sent As Paper Document ☐	Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.
Exhibit 3 - Form, Report, or Questionnaire Add Remove View Exhibit Sent As Paper Document ☐	Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.
Exhibit 4 - Marked Copies Add Remove View	The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.
Exhibit 5 - Proposed Rule Text Add Remove View	The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.
Partial Amendment Add Remove View	If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) The International Securities Exchange, LLC ("ISE" or "Exchange"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] is filing with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change to amend its Schedule of Fees to change the definition of net zero complex order for purposes of determining eligibility for Priority Customer complex order rebates.

While changes to the Schedule of Fees are effective upon filing, the Exchange has designated these changes to be operative on February 10, 2017.

A notice of the proposed rule change for publication in the Federal Register is attached as Exhibit 1. The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors of the Exchange (the "Board") on August 15, 2016. Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

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

2 17 CFR 240.19b-4.

Questions and comments on the proposed rule change may be directed to:

Adrian Griffiths
Associate General Counsel
Nasdaq, Inc.
212-897-8176

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

a. Purpose

The purpose of the proposed rule change to amend the Schedule of Fees to change the definition of net zero complex order for purposes of determining eligibility for Priority Customer complex order rebates. Currently, the Exchange does not provide Priority Customer rebates for complex orders that that leg in to the regular order book and trade at a net price at or near $0.00 (*i.e.*, net zero complex orders), provided those orders are entered on behalf of originating market participants that execute an ADV of at least 2,000 net zero complex orders in a given month.[3] While these complex orders would generally not find a counterparty in the complex order book, they may leg in to the regular order book where they are typically executed by Market Makers[4] or other market participants on the individual legs who pay a fee to trade with this order flow. The Exchange does not provide rebates for net zero complex orders to prevent members from engaging in rebate arbitrage by entering valueless complex orders solely to recover

3 See Securities Exchange Act Release No. 77821 (May 12, 2016), 81 FR 31270 (May 18, 2016). See also SR-ISE-2017-16 (pending publication). Priority Customer complex orders that do not meet the definition of a net zero complex order, or that are entered on behalf of originating market participants that do not reach the 2,000 contract ADV threshold, remain eligible for rebates based on the tier achieved.

4 The term "Market Makers" refers to "Competitive Market Makers" and "Primary Market Makers" collectively. See ISE Rule 100(a)(25).

rebates. 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 that is within a range of $0.01 credit and $0.01 debit. In particular, the Exchange calculates the net price of the complex order by multiplying the quantity on each leg by the amount of credit or debit for that leg, and summing the prices calculated with respect to each leg. Based on that calculation, the complex order is counted as net zero if the net price is within a range of $0.01 credit and $0.01 debit. This methodology is illustrated in the example below.

<u>Example 1</u>:

SPY Feb 188 Put, Buy 270 contracts @ $0.01 = $2.70 debit

SPY Feb 193 Put, Sell 270 contracts @ $0.01 = ($2.70) credit

Net price = $0 (i.e., $2.70 - $2.70)

The Exchange believes that its current methodology does not fully capture the trading activity that this provision is meant to cover, as the market participants that are entering these net zero orders have found a way to continue to earn a rebate for their valueless trades at the expense of the Exchange and the members who trade against these complex orders when they leg in to the regular market. In particular, these market participants have been submitting complex orders that are essentially valueless on a per contract basis, but that result in a net credit or debit on a full trade basis that is not within $0.01 credit or $0.01 debit based on the methodology illustrated in the example above. The Exchange therefore proposes to change its methodology to look at the net price *per contract*, which the Exchange believes more accurately captures its intentions in eliminating rebates for net zero complex orders. To calculate the net price per contract, the Exchange will use the same methodology described above, and then divide the calculated net price by the total quantity (i.e., the sum of the contracts for each leg).[5] The Exchange believes that this methodology will discourage market participants from engaging in this valueless conduct as these non-economic complex orders will no longer be rebate eligible. The example below illustrates the proposed net zero per contract methodology.

Example 2:

SPY Feb 188 Put, Buy 270 contracts @ $0.01 = $2.70 debit

SPY Feb 199 Put, Buy 180 contracts@ $0.02= $3.60 debit

SPY Feb 193 Put, Sell 450 contracts @ $0.01 = ($4.50) credit

Net price = $1.80 debit (i.e., $4.50 - $2.70 - $3.60)

Net price per contract = $0.002 debit (i.e., $1.80 ÷ 900)

Finally, the Exchange proposes to clarify that the current ADV threshold is based on the number of contracts executed in net zero complex orders. Although the Exchange has always calculated the ADV threshold, which is a measure of volume, based on the number of contracts executed, the Exchange believes that explicitly adding the word "contract" to this rule will avoid any possible confusion among members. Members will not receive rebates for net zero complex orders entered on behalf of originating market participants that execute an ADV of at least 2,000 *contracts in* net zero complex orders in a given month.

5 Complex orders executed from February 1, 2017 to February 9, 2017 will be provided rebates based on the net zero logic in place prior to this filing.

b. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[6] in general, and Section 6(b)(4) of the Act,[7] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

The Exchange believes that the proposed per contract methodology is reasonable and equitable as it is designed to remove financial incentives for market participants to engage in rebate arbitrage by entering net zero complex orders on the Exchange that do not have any economic substance. The Exchange currently has a rule in place to discourage members from entering net zero complex orders. The rule, however, is not sufficiently broad to stop this trading activity, as market participants continue to receive rebates for complex orders that would be considered net zero on a per contract basis. The Exchange is therefore proposing to modify its definition of a net zero complex order, consistent with its intent in adopting this provision. Priority Customer complex orders, including net zero complex orders that leg in to the regular order book, are currently paid significant rebates by the Exchange, which are funded in part by charging higher fees to the market participants that trade against these orders. The Exchange believes that changing the methodology used for determining net zero complex orders will discourage market participants from entering these valueless orders, which are entered for the sole purpose of earning a rebate.

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6 15 U.S.C. 78f.

7 15 U.S.C. 78f(b)(4).

In January 2017, no market participants met the 10,000 contract ADV threshold for net zero complex orders based on the current net zero criteria. In addition, no market participants that traded complex orders on the Exchange during January 2017 would have met the lower 2,000 contract ADV threshold implemented this February.[8] This is not due to market participants stopping this behavior but rather to firms modifying their activity to get around the net zero criteria implemented in the original net zero filing. With the proposed per contract change, the Exchange believes that market participants engaged in rebate arbitrage will be effectively prohibited from earning rebates for their net zero complex orders. In January 2017, for example, the Exchange notes that although no market participants met the net zero ADV threshold based on current criteria, five market participants would have met the current threshold based on the proposed criteria. Based on the proposed per contract methodology, each of these market participants executed a net zero ADV of greater than 7,000 contracts compared to a net zero ADV of less than 300 contracts for the next highest market participant, and an average net zero ADV of approximately 6 contracts for all market participants that entered complex orders on the Exchange during the month of January other than the five that would have surpassed the threshold. In addition, the Exchange notes that the vast majority of market participants that entered complex orders on the Exchange in January 2017 would continue to have a net zero ADV of 0 contracts based on the per contract methodology.

The continued submission by a handful of market participants of a high volume of net zero complex orders that leg into the regular order book has generated complaints from the Market Makers that trade against these orders in the regular order book, as firms

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[8] See supra note 3.

recognize these net zero complex orders as essentially non-economic. The Exchange believes that adopting the proposed per contract methodology will make it more difficult for firms to continue to enter net zero complex orders purely to earn a rebate. This will reduce the cost of these trades to the Exchange and its members as firms are limited in the amount of this net zero complex order activity that they can conduct on the Exchange.

The Exchange also believes that the proposed rule change is not unfairly discriminatory as it is designed to stop market participants from taking advantage of Exchange rebates by entering orders that lack economic substance. The Exchange is proposing to eliminate Priority Customer complex order rebates for all market participants that execute a large number of net zero complex orders based on the proposed methodology. To the extent that those market participants execute legitimate complex orders, however, they will continue to receive the same rebates that they do today. In addition, market participants that execute an insubstantial volume of net zero complex orders will also continue to receive rebates. The Exchange does not believe that it is unfairly discriminatory to continue to offer rebates to firms that do not hit the net zero ADV threshold as this more limited trading activity is not indicative of rebate arbitrage. While the Exchange could prohibit rebates for any net zero complex orders without an ADV threshold, doing so would disadvantage innocent market participants that are not engaged in rebate arbitrage. The Exchange believes that the decision to allow rebates for firms with a limited ADV in net zero complex orders properly balances the need to encourage market participants to send order flow to the Exchange, and the need to prevent activity that is harmful to the market. Moreover, all market participants will be treated the same based on their net zero ADV.

Finally, the Exchange believes that addition of the word "contract" to the ADV threshold is reasonable, equitable, and not unfairly discriminatory as this change will clarify for members that the ADV threshold, which is a measure of volume, is calculated based on the number of contracts executed. The Exchange notes that this is not a change to the Exchange's current practice but is a simple clean up change to make the Schedule of Fees easier for members to understand.

4. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[9] the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. By refining the definition of net zero complex order, the proposed rule change is designed to eliminate the ability for certain market participants to engage in rebate arbitrage to the detriment of the Exchange and its members. In addition, adding the word "contract" to the ADV threshold is a non-substantive change made purely for clarification. The Exchange operates in a highly competitive market in which market participants can readily direct their order flow to competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and rebates to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed fee changes reflect this competitive environment.

[9] 15 U.S.C. 78f(b)(8).

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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

6. Extension of Time Period for Commission Action

Not Applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Pursuant to Section 19(b)(3)(A)(ii) of the Act, the Exchange has designated this proposal as establishing or changing a due, fee or other charge imposed on any person, whether or not the person is a member of a self-regulatory organization, which renders the proposed rule change effective upon filing.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

The proposed rule change is not based on the rules of another self-regulatory organization

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

1. Notice of Proposed Rule Change for publication in the Federal Register.

5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. ; File No. SR-ISE-2017-22)

March __, 2017

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Fee Schedule to Change the Definition of Net Zero Complex Order

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 1, 2017, the International Securities Exchange, 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 Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. <u>Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change</u>

The Exchange proposes to amend its Schedule of Fees to change the definition of net zero complex order for purposes of determining eligibility for Priority Customer complex order rebates.

While changes to the Schedule of Fees are effective upon filing, the Exchange has designated these changes to be operative on February 10, 2017.

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

2 17 CFR 240.19b-4.

The text of the proposed rule change is available on the Exchange's Website at www.ise.com, 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 to amend the Schedule of Fees to change the definition of net zero complex order for purposes of determining eligibility for Priority Customer complex order rebates. Currently, the Exchange does not provide Priority Customer rebates for complex orders that that leg in to the regular order book and trade at a net price at or near $0.00 (*i.e.*, net zero complex orders), provided those orders are entered on behalf of originating market participants that execute an ADV of at least 2,000 net zero complex orders in a given month.[3] While these complex orders would generally not find a counterparty in the complex order book, they may leg in to the

[3] See Securities Exchange Act Release No. 77821 (May 12, 2016), 81 FR 31270 (May 18, 2016). See also SR-ISE-2017-16 (pending publication). Priority Customer complex orders that do not meet the definition of a net zero complex order, or that are entered on behalf of originating market participants that do not reach the 2,000 contract ADV threshold, remain eligible for rebates based on the tier achieved.

regular order book where they are typically executed by Market Makers[4] or other market participants on the individual legs who pay a fee to trade with this order flow. The Exchange does not provide rebates for net zero complex orders to prevent members from engaging in rebate arbitrage by entering valueless complex orders solely to recover rebates. 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 that is within a range of $0.01 credit and $0.01 debit. In particular, the Exchange calculates the net price of the complex order by multiplying the quantity on each leg by the amount of credit or debit for that leg, and summing the prices calculated with respect to each leg. Based on that calculation, the complex order is counted as net zero if the net price is within a range of $0.01 credit and $0.01 debit. This methodology is illustrated in the example below.

<u>Example 1</u>:

SPY Feb 188 Put, Buy 270 contracts @ $0.01 = $2.70 debit

SPY Feb 193 Put, Sell 270 contracts @ $0.01 = ($2.70) credit

Net price = $0 (i.e., $2.70 - $2.70)

The Exchange believes that its current methodology does not fully capture the trading activity that this provision is meant to cover, as the market participants that are entering these net zero orders have found a way to continue to earn a rebate for their valueless trades at the expense of the Exchange and the members who trade against these complex orders when they leg in to the regular market. In particular, these market participants have been submitting complex orders that are essentially valueless on a per

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4 The term “Market Makers” refers to “Competitive Market Makers” and “Primary Market Makers” collectively. See ISE Rule 100(a)(25).

contract basis, but that result in a net credit or debit on a full trade basis that is not within $0.01 credit or $0.01 debit based on the methodology illustrated in the example above. The Exchange therefore proposes to change its methodology to look at the net price *per contract*, which the Exchange believes more accurately captures its intentions in eliminating rebates for net zero complex orders. To calculate the net price per contract, the Exchange will use the same methodology described above, and then divide the calculated net price by the total quantity (i.e., the sum of the contracts for each leg).[5] The Exchange believes that this methodology will discourage market participants from engaging in this valueless conduct as these non-economic complex orders will no longer be rebate eligible. The example below illustrates the proposed net zero per contract methodology.

Example 2:

SPY Feb 188 Put, Buy 270 contracts @ $0.01 = $2.70 debit

SPY Feb 199 Put, Buy 180 contracts@ $0.02= $3.60 debit

SPY Feb 193 Put, Sell 450 contracts @ $0.01 = ($4.50) credit

Net price = $1.80 debit (i.e., $4.50 - $2.70 - $3.60)

Net price per contract = $0.002 debit (i.e., $1.80 ÷ 900)

Finally, the Exchange proposes to clarify that the current ADV threshold is based on the number of contracts executed in net zero complex orders. Although the Exchange has always calculated the ADV threshold, which is a measure of volume, based on the number of contracts executed, the Exchange believes that explicitly adding the word "contract" to this rule will avoid any possible confusion among members. Members

5 Complex orders executed from February 1, 2017 to February 9, 2017 will be provided rebates based on the net zero logic in place prior to this filing.

will not receive rebates for net zero complex orders entered on behalf of originating market participants that execute an ADV of at least 2,000 *contracts in* net zero complex orders in a given month.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[6] in general, and Section 6(b)(4) of the Act,[7] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

The Exchange believes that the proposed per contract methodology is reasonable and equitable as it is designed to remove financial incentives for market participants to engage in rebate arbitrage by entering net zero complex orders on the Exchange that do not have any economic substance. The Exchange currently has a rule in place to discourage members from entering net zero complex orders. The rule, however, is not sufficiently broad to stop this trading activity, as market participants continue to receive rebates for complex orders that would be considered net zero on a per contract basis. The Exchange is therefore proposing to modify its definition of a net zero complex order, consistent with its intent in adopting this provision. Priority Customer complex orders, including net zero complex orders that leg in to the regular order book, are currently paid significant rebates by the Exchange, which are funded in part by charging higher fees to the market participants that trade against these orders. The Exchange believes that changing the methodology used for determining net zero complex orders will discourage

6 15 U.S.C. 78f.

7 15 U.S.C. 78f(b)(4).

market participants from entering these valueless orders, which are entered for the sole purpose of earning a rebate.

In January 2017, no market participants met the 10,000 contract ADV threshold for net zero complex orders based on the current net zero criteria. In addition, no market participants that traded complex orders on the Exchange during January 2017 would have met the lower 2,000 contract ADV threshold implemented this February.[8] This is not due to market participants stopping this behavior but rather to firms modifying their activity to get around the net zero criteria implemented in the original net zero filing. With the proposed per contract change, the Exchange believes that market participants engaged in rebate arbitrage will be effectively prohibited from earning rebates for their net zero complex orders. In January 2017, for example, the Exchange notes that although no market participants met the net zero ADV threshold based on current criteria, five market participants would have met the current threshold based on the proposed criteria. Based on the proposed per contract methodology, each of these market participants executed a net zero ADV of greater than 7,000 contracts compared to a net zero ADV of less than 300 contracts for the next highest market participant, and an average net zero ADV of approximately 6 contracts for all market participants that entered complex orders on the Exchange during the month of January other than the five that would have surpassed the threshold. In addition, the Exchange notes that the vast majority of market participants that entered complex orders on the Exchange in January 2017 would continue to have a net zero ADV of 0 contracts based on the per contract methodology.

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8 See supra note 3.

The continued submission by a handful of market participants of a high volume of net zero complex orders that leg into the regular order book has generated complaints from the Market Makers that trade against these orders in the regular order book, as firms recognize these net zero complex orders as essentially non-economic. The Exchange believes that adopting the proposed per contract methodology will make it more difficult for firms to continue to enter net zero complex orders purely to earn a rebate. This will reduce the cost of these trades to the Exchange and its members as firms are limited in the amount of this net zero complex order activity that they can conduct on the Exchange.

The Exchange also believes that the proposed rule change is not unfairly discriminatory as it is designed to stop market participants from taking advantage of Exchange rebates by entering orders that lack economic substance. The Exchange is proposing to eliminate Priority Customer complex order rebates for all market participants that execute a large number of net zero complex orders based on the proposed methodology. To the extent that those market participants execute legitimate complex orders, however, they will continue to receive the same rebates that they do today. In addition, market participants that execute an insubstantial volume of net zero complex orders will also continue to receive rebates. The Exchange does not believe that it is unfairly discriminatory to continue to offer rebates to firms that do not hit the net zero ADV threshold as this more limited trading activity is not indicative of rebate arbitrage. While the Exchange could prohibit rebates for any net zero complex orders without an ADV threshold, doing so would disadvantage innocent market participants that are not engaged in rebate arbitrage. The Exchange believes that the decision to allow rebates for firms with a limited ADV in net zero complex orders properly balances the need to encourage market participants to send order flow to the Exchange, and the need to prevent activity that is harmful to the market. Moreover, all market participants will be treated the same based on their net zero ADV.

Finally, the Exchange believes that addition of the word "contract" to the ADV threshold is reasonable, equitable, and not unfairly discriminatory as this change will clarify for members that the ADV threshold, which is a measure of volume, is calculated based on the number of contracts executed. The Exchange notes that this is not a change to the Exchange's current practice but is a simple clean up change to make the Schedule of Fees easier for members to understand.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[9] the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. By refining the definition of net zero complex order, the proposed rule change is designed to eliminate the ability for certain market participants to engage in rebate arbitrage to the detriment of the Exchange and its members. In addition, adding the word "contract" to the ADV threshold is a non-substantive change made purely for clarification. The Exchange operates in a highly competitive market in which market participants can readily direct their order flow to competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and rebates to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed fee changes reflect this competitive environment.

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9 15 U.S.C. 78f(b)(8).

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.[10] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-ISE-2017-22 on the subject line.

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-ISE-2017-22. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (http://www.sec.gov/rules/sro.shtml).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-ISE-2017-22 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Robert W. Errett
Deputy Secretary

[11] 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Deleted text is [bracketed]. New text is underlined.

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II. Complex Order Fees and Rebates

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13. Members will not receive rebates for net zero complex orders entered on behalf of originating market participants that execute an ADV of at least 2,000 contracts in net zero complex orders in a given month. For purposes of determining which complex orders qualify as "net zero" the Exchange will count 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.

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