OMB APPROVAL
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Required fields are shown with yellow backgrounds and asterisks.

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

File No.* SR - 2017 - * 39
Amendment No. (req. for Amendments *)

Filing by Nasdaq ISE, LLC

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 *).

A proposed rule change to amend the Schedule of Fees to modify fees charged and rebates provided for orders executed in the Price Improvement Mechanism.

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 * Sr. Associate General Counsel
E-mail * adrian.griffiths@nasdaq.com
Telephone * (212) 231-5176 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 05/01/2017

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) Nasdaq ISE, 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 the Schedule of Fees to modify fees charged and rebates provided for orders executed in the Price Improvement Mechanism.

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 (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.

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

Adrian Griffiths
Senior Associate General Counsel
Nasdaq, Inc.
212-231-5176

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

2 17 CFR 240.19b-4.

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 is to amend the Schedule of Fees to modify fees charged and rebates provided for orders executed in the Price Improvement Mechanism ("PIM"). In particular, the proposed rule change makes the following changes for both regular and complex orders in Select Symbols[3] and Non-Select Symbols:[4] (1) amends the fee PIM orders other than Priority Customer[5] orders to be $0.10 per contract, regardless of the size of the order; (2) provides discounted fees for PIM orders such that members that execute an average daily volume ("ADV") of 7,500 or more contracts in the PIM in a given month will pay a fee of $0.05 per contract, and Members that execute an ADV of 12,500 or more contracts in the PIM in a given month will not pay a fee for PIM orders; (3) amends the fee for Responses to PIM orders to be $0.20 per contract; and (4) eliminates the PIM break-up rebate. Each of these proposed changes are described in more detail below.

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[3] "Select Symbols" are options overlying all symbols listed on the Nasdaq ISE that are in the Penny Pilot Program.

[4] "Non-Select Symbols" are options overlying all symbols excluding Select Symbols.

[5] 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 Rule 100(a)(37A).

Fee for PIM Orders

Currently, regular and complex PIM orders of 100 or fewer contracts in Select and Non-Select Symbols are charged a fee of $0.05 per contract for Market Maker,[6] Non-Nasdaq ISE Market Maker,[7] Firm Proprietary,[8] Broker-Dealer, and Professional Customer[9] orders ("non-Priority Customer orders");[10] Priority Customer orders receive free executions in the PIM. This fee for non-Priority Customer PIM orders of 100 or fewer contracts is reduced to $0.03 per contract for orders executed by Members that have an ADV of 20,000 or more Priority Customer contracts in a given month executed in the PIM.[11] PIM orders of more than 100 contracts pay the fee for Crossing Orders,

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

7 A "Non-Nasdaq ISE Market Maker" is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934, as amended, registered in the same options class on another options exchange.

8 A "Firm Proprietary" order is an order submitted by a member for its own proprietary account.

9 A "Professional Customer" is a person or entity that is not a broker/dealer and is not a Priority Customer.

10 Fees apply to the originating and contra order. Firm Proprietary and Non-Nasdaq ISE Market Maker contracts traded are subject to the Crossing Fee Cap, as provided in Section IV.H of the Schedule of Fees. The Schedule of Fees is currently missing a reference indicating that footnote 6 under Section II., Complex Order Fees and Rebate, relating to the Crossing Fee Cap applies to the fee for PIM orders. The Exchange proposes to add this reference.

11 This discounted fee is applied retroactively to all eligible PIM volume in that month once the threshold has been reached. Priority Customer ADV includes all volume in all symbols and order types. All eligible volume from affiliated Members will be aggregated in determining total affiliated Priority Customer ADV, provided there is at least 75% common ownership between the Members as reflected on each Member's Form BD, Schedule A. For purposes of determining Priority Customer ADV, any day that the regular order book is not open for the entire trading day or the Exchange instructs members in writing to route their

which is $0.20 per contract for Non-Nasdaq ISE Market Maker, Firm Proprietary, Broker-Dealer, and Professional Customer orders for both regular and complex orders in Select and Non-Select Symbols.[12] Regular Market Maker orders in Select Symbols and Market Maker complex orders in both Select and Non-Select Symbols are charged a fee of $0.20 per contract; Regular Market Maker orders in Non-Select Symbols are also charged a fee of $0.20 per contract if sent by an Electronic Access Member ("EAM") and are otherwise charged a fee of $0.25 per contract, subject to applicable tier discounts.[13]

The Exchange now proposes to: (1) adopt a fee of $0.10 per contract for non-Priority Customer orders executed in the PIM, and (2) remove the distinction between PIM orders of 100 or fewer contracts and PIM orders of more than 100 contracts. As proposed, non-Priority Customer PIM orders for both regular and complex, and in both Select and Non-Select Symbols, will be charged a fee of $0.10 per contract. In addition, the Exchange proposes to allow members to qualify for lower fees (or no fees) based on the amount of volume they execute in the PIM. In particular, members that execute an ADV of 7,500 or more contracts in the PIM in a given month will be charged a reduced fee of $0.05 per contract, and members that execute an ADV of 12,500 or more contracts will not be charged a fee for PIM orders. As is the case for the Exchange's other volume

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orders to other markets may be excluded from such calculation; provided that the Exchange will only remove the day for members that would have a lower ADV with the day included.

12 Fees apply to the originating and contra order. Firm Proprietary and Non-Nasdaq ISE Market Maker contracts traded are subject to the Crossing Fee Cap, as provided in Section IV.H of the Schedule of Fees.

13 See Schedule of Fees, Section IV.C.

based fees, the discounted fees will be applied retroactively to all eligible PIM volume in that month once the threshold has been reached.

PIM Response Fees and Break-Up Rebates

Currently, for regular orders in Select and Non-Select Symbols, the Exchange charges all market participants a fee of $0.50 per contract for Responses to Crossing Orders. For complex orders, the fee for Responses to Crossing Orders is $0.48 per contract in Select Symbols for all market participants, and in Non-Select Symbols is $0.91 per contract for Market Maker orders and $0.96 per contract for Non-Nasdaq ISE Market Maker, Firm Proprietary, Broker-Dealer, Professional Customer, and Priority Customer orders. In addition, the Exchange provides a PIM break-up rebate for contracts that are submitted to PIM that do not trade with their contra order.[14] This PIM break-up Rebate is provided to Non-Nasdaq ISE Market Maker, Firm Proprietary, Broker-Dealer, Professional Customer, and Priority Customer orders, and is $0.35 per contract for regular and complex orders in Select Symbols, $0.15 per contract for regular orders in Non-Select Symbols, and $0.80 per contract for complex orders in Non-Select Symbols. The Exchange now proposes to (1) charge a lower fee of $0.20 per contract for Responses to PIM orders for all market participants, and (2) eliminate the PIM break-up rebate provided for contracts that do not trade with their contra order.

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14 The applicable fee is applied to any contracts for which a rebate is provided. For complex orders submitted to the PIM the rebate is provided per contract leg except when those contracts trade against pre-existing orders and quotes on the Exchange's order books.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[15] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[16] 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.

Fee for PIM Orders

The Exchange believes that the proposed fees for PIM orders are reasonable and equitable because they are designed to increase participation in the PIM. In particular, the Exchange believes that the proposed fee for PIM orders is reasonable and equitable as it is designed to reward members that send a high volume of PIM orders to the Exchange. As proposed, although the Exchange is removing incentives for small PIM orders of 100 or fewer contracts, members will pay a fee for PIM orders that remains lower than the fees charged for other Crossing Orders, and will qualify for volume based discounts, including free executions in the PIM for members that meet the higher proposed volume threshold. The Exchange believes that this fee structure will incentivize members to execute their orders in the PIM to the benefit of all market participants that trade on the Exchange. Furthermore, the Exchange believes that this proposed change is not unfairly discriminatory as all non-Priority Customer orders will continue to be subject to the same fees, and can qualify for further discounts based on volume executed in the PIM. Priority Customer orders will also continue to receive free executions in the PIM. The Exchange

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

[16] 15 U.S.C. 78f(b)(4) and (5).

believes that it is equitable and not unfairly discriminatory to charge lower fees for Priority Customer orders as a Priority Customer is by definition not a broker or 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). This limitation does not apply to participants whose behavior is substantially similar to that of market professionals, including, Professional Customers, who will generally submit a higher number of orders than Priority Customers. Furthermore, the Exchange notes that all market participants can qualify for free executions in the PIM if the member executes the required volume of contracts in the PIM.

PIM Response Fees and Break-Up Rebates

The Exchange also believes that the proposed changes to PIM response fees and break-up rebates are reasonable and equitable as they are designed to make it more attractive for market participants to respond to PIM auctions, thereby increasing price improvement opportunities for PIM orders. As proposed, market participants that respond to PIM auctions will pay a response fee that is significantly lower than that charged for responses to other Crossing Orders, and members that initiate a PIM auction will no longer qualify for break-up rebates if they enter an order into the PIM that does not trade against its contra order. The Exchange believes that these changes will make it easier for firms to participate in the PIM by responding to these auctions with price improvement. Furthermore, the Exchange does not believe that the proposed rule change is unfairly discriminatory as all market participants that respond to PIM auctions will be charged the same fee for Responses to PIM orders, and no market participants will be eligible for PIM break-up rebates, which are being eliminated.

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

In accordance with Section 6(b)(8) of the Act,[17] 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. To the contrary, the Exchange believes that the proposed fee change is pro-competitive as it is designed to provide incentives for members to submit orders to the PIM, and to encourage members to respond to PIM auctions and thereby increase price improvement opportunities for orders submitted to the PIM. 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.

5. 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.

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,[18] the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-

[17] 15 U.S.C. 78f(b)(8).

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

regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

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.

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 or of the Commission.

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-2017-39)

May __, 2017

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to amend the Schedule of Fees to modify fees and rebates for PIM orders.

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 May 1, 2017, Nasdaq ISE, LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The 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 Schedule of Fees to modify fees charged and rebates provided for orders executed in the Price Improvement Mechanism.

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

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

2 17 CFR 240.19b-4.

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 Schedule of Fees to modify fees charged and rebates provided for orders executed in the Price Improvement Mechanism ("PIM"). In particular, the proposed rule change makes the following changes for both regular and complex orders in Select Symbols[3] and Non-Select Symbols:[4] (1) amends the fee PIM orders other than Priority Customer[5] orders to be $0.10 per contract, regardless of the size of the order; (2) provides discounted fees for PIM orders such that members that execute an average daily volume ("ADV") of 7,500 or more contracts in the PIM in a given month will pay a fee of $0.05 per contract, and Members that execute an ADV of 12,500 or more contracts in the PIM in a given month will not pay a fee for PIM orders; (3) amends the fee for Responses to PIM orders to be $0.20 per contract; and (4) eliminates the PIM break-up rebate. Each of these proposed changes are described in more detail below.

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3 "Select Symbols" are options overlying all symbols listed on the Nasdaq ISE that are in the Penny Pilot Program.

4 "Non-Select Symbols" are options overlying all symbols excluding Select Symbols.

5 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 Rule 100(a)(37A).

Fee for PIM Orders

Currently, regular and complex PIM orders of 100 or fewer contracts in Select and Non-Select Symbols are charged a fee of $0.05 per contract for Market Maker,[6] Non-Nasdaq ISE Market Maker,[7] Firm Proprietary,[8] Broker-Dealer, and Professional Customer[9] orders ("non-Priority Customer orders");[10] Priority Customer orders receive free executions in the PIM. This fee for non-Priority Customer PIM orders of 100 or fewer contracts is reduced to $0.03 per contract for orders executed by Members that have an ADV of 20,000 or more Priority Customer contracts in a given month executed in the PIM.[11] PIM orders of more than 100 contracts pay the fee for Crossing Orders,

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

7 A "Non-Nasdaq ISE Market Maker" is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934, as amended, registered in the same options class on another options exchange.

8 A "Firm Proprietary" order is an order submitted by a member for its own proprietary account.

9 A "Professional Customer" is a person or entity that is not a broker/dealer and is not a Priority Customer.

10 Fees apply to the originating and contra order. Firm Proprietary and Non-Nasdaq ISE Market Maker contracts traded are subject to the Crossing Fee Cap, as provided in Section IV.H of the Schedule of Fees. The Schedule of Fees is currently missing a reference indicating that footnote 6 under Section II., Complex Order Fees and Rebate, relating to the Crossing Fee Cap applies to the fee for PIM orders. The Exchange proposes to add this reference.

11 This discounted fee is applied retroactively to all eligible PIM volume in that month once the threshold has been reached. Priority Customer ADV includes all volume in all symbols and order types. All eligible volume from affiliated Members will be aggregated in determining total affiliated Priority Customer ADV, provided there is at least 75% common ownership between the Members as reflected on each Member's Form BD, Schedule A. For purposes of determining Priority Customer ADV, any day that the regular order book is not open for the entire trading day or the Exchange instructs members in writing to route their

which is $0.20 per contract for Non-Nasdaq ISE Market Maker, Firm Proprietary, Broker-Dealer, and Professional Customer orders for both regular and complex orders in Select and Non-Select Symbols.[12] Regular Market Maker orders in Select Symbols and Market Maker complex orders in both Select and Non-Select Symbols are charged a fee of $0.20 per contract; Regular Market Maker orders in Non-Select Symbols are also charged a fee of $0.20 per contract if sent by an Electronic Access Member ("EAM") and are otherwise charged a fee of $0.25 per contract, subject to applicable tier discounts.[13]

The Exchange now proposes to: (1) adopt a fee of $0.10 per contract for non-Priority Customer orders executed in the PIM, and (2) remove the distinction between PIM orders of 100 or fewer contracts and PIM orders of more than 100 contracts. As proposed, non-Priority Customer PIM orders for both regular and complex, and in both Select and Non-Select Symbols, will be charged a fee of $0.10 per contract. In addition, the Exchange proposes to allow members to qualify for lower fees (or no fees) based on the amount of volume they execute in the PIM. In particular, members that execute an ADV of 7,500 or more contracts in the PIM in a given month will be charged a reduced fee of $0.05 per contract, and members that execute an ADV of 12,500 or more contracts will not be charged a fee for PIM orders. As is the case for the Exchange's other volume

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13 See Schedule of Fees, Section IV.C.

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14 The applicable fee is applied to any contracts for which a rebate is provided. For complex orders submitted to the PIM the rebate is provided per contract leg except when those contracts trade against pre-existing orders and quotes on the Exchange's order books.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[15] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[16] 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.

Fee for PIM Orders

The Exchange believes that the proposed fees for PIM orders are reasonable and equitable because they are designed to increase participation in the PIM. In particular, the Exchange believes that the proposed fee for PIM orders is reasonable and equitable as it is designed to reward members that send a high volume of PIM orders to the Exchange. As proposed, although the Exchange is removing incentives for small PIM orders of 100 or fewer contracts, members will pay a fee for PIM orders that remains lower than the fees charged for other Crossing Orders, and will qualify for volume based discounts, including free executions in the PIM for members that meet the higher proposed volume threshold. The Exchange believes that this fee structure will incentivize members to execute their orders in the PIM to the benefit of all market participants that trade on the Exchange. Furthermore, the Exchange believes that this proposed change is not unfairly discriminatory as all non-Priority Customer orders will continue to be subject to the same fees, and can qualify for further discounts based on volume executed in the PIM. Priority Customer orders will also continue to receive free executions in the PIM. The Exchange

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

16 15 U.S.C. 78f(b)(4) and (5).

believes that it is equitable and not unfairly discriminatory to charge lower fees for Priority Customer orders as a Priority Customer is by definition not a broker or 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). This limitation does not apply to participants whose behavior is substantially similar to that of market professionals, including, Professional Customers, who will generally submit a higher number of orders than Priority Customers. Furthermore, the Exchange notes that all market participants can qualify for free executions in the PIM if the member executes the required volume of contracts in the PIM.

PIM Response Fees and Break-Up Rebates

The Exchange also believes that the proposed changes to PIM response fees and break-up rebates are reasonable and equitable as they are designed to make it more attractive for market participants to respond to PIM auctions, thereby increasing price improvement opportunities for PIM orders. As proposed, market participants that respond to PIM auctions will pay a response fee that is significantly lower than that charged for responses to other Crossing Orders, and members that initiate a PIM auction will no longer qualify for break-up rebates if they enter an order into the PIM that does not trade against its contra order. The Exchange believes that these changes will make it easier for firms to participate in the PIM by responding to these auctions with price improvement. Furthermore, the Exchange does not believe that the proposed rule change is unfairly discriminatory as all market participants that respond to PIM auctions will be charged the same fee for Responses to PIM orders, and no market participants will be eligible for PIM break-up rebates, which are being eliminated.

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

In accordance with Section 6(b)(8) of the Act,[17] 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. To the contrary, the Exchange believes that the proposed fee change is pro-competitive as it is designed to provide incentives for members to submit orders to the PIM, and to encourage members to respond to PIM auctions and thereby increase price improvement opportunities for orders submitted to the PIM. 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.

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.[18] 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

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[17] 15 U.S.C. 78f(b)(8).

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

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-2017-39 on the subject line.

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-2017-39. 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-2017-39 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.[19]

Robert W. Errett
Deputy Secretary

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[19] 17 CFR 200.30-3(a)(12).

EXHIBIT 5

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

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I. Regular Order Fees and Rebates

Select Symbols

Market Participant	Maker Rebate / Fee	Taker Fee	Fee for Crossing Orders Except PIM Orders(1)(2)	Fee for PIM Orders [of 100 or Fewer Contracts] (1)(2)[(12)](13)	Fee for Responses to Crossing Orders Except PIM Orders	[PIM Break-up Rebate(3)]	Fee for Responses to PIM Orders	Facilitation and Solicitation Break-up Rebate(4)
Tier 1 Market Maker Plus(5)	($0.15)(10)	$0.44	$0.20	[$0.05] $0.10	$0.50	[N/A]	$0.20	N/A
Tier 2 Market Maker Plus(5)	($0.18)(10)(14)	$0.44	$0.20	[$0.05] $0.10	$0.50	[N/A]	$0.20	N/A
Tier 3 Market Maker Plus(5)	($0.22)(10)(15)	$0.44	$0.20	[$0.05] $0.10	$0.50	[N/A]	$0.20	N/A
Market Maker(8)	$0.10 (11)	$0.44	$0.20	[$0.05] $0.10	$0.50	[N/A]	$0.20	N/A
Non-Nasdaq ISE Market Maker (FarMM)	$0.10 (11)	$0.45	$0.20	[$0.05] $0.10	$0.50	[($0.35)]	$0.20	($0.15)
Firm Proprietary / Broker-Dealer	$0.10	$0.45	$0.20	[$0.05] $0.10	$0.50	[($0.35)]	$0.20	($0.15)
Professional Customer	$0.10	$0.45	$0.20(16)	[$0.05] $0.10	$0.50	[($0.35)]	$0.20	($0.15)
Priority Customer	$0.00	$0.40	$0.00	$0.00	$0.50	[($0.35)]	$0.20	($0.15)

Non-Select Symbols (Excluding Index Options)(7)

Market Participant	Fee	Fee for Crossing Orders Except PIM Orders (1)(2)	Fee for PIM Orders [of 100 or Fewer Contracts] (1)(2)[(12)](13)	Fee for Responses to Crossing Orders Except PIM Orders	[PIM Break-up Rebate(3)]	Fee for Responses to PIM Orders
Market Maker	$0.25(6)	$0.25(6)	[$0.05] $0.10	$0.50	[N/A]	$0.20
Market Maker (for orders sent by Electronic Access Members)	$0.20	$0.20	[$0.05] $0.10	$0.50	[N/A]	$0.20
Non-Nasdaq ISE Market Maker (FarMM)	$0.72	$0.20	[$0.05] $0.10	$0.50	[($0.15)]	$0.20
Firm Proprietary / Broker-Dealer	$0.72	$0.20	[$0.05] $0.10	$0.50	[($0.15)]	$0.20
Professional Customer	$0.72	$0.20(16)	[$0.05] $0.10	$0.50	[($0.15)]	$0.20
Priority Customer	$0.00	$0.00	$0.00	$0.50	[($0.15)]	$0.20

* * *

1. Firm Proprietary and Non-Nasdaq ISE Market Maker contracts traded are subject to the Crossing Fee Cap, as provided in Section IV.H.
2. Fees apply to the originating and contra order.

3. [Rebate provided for contracts that are submitted to PIM that do not trade with their contra order. The applicable fee is applied to any contracts for which a rebate is provided.] Reserved.
4. Rebate provided for contracts that are submitted to the Facilitation and Solicited Order Mechanisms that do not trade with their contra order except when those contracts trade against pre-existing orders and quotes on the Exchange's orderbooks. The fee for Crossing Orders is applied to any contracts for which a rebate is provided.
5. A Market Maker Plus is a Market Maker who is on the National Best Bid or National Best Offer a specified percentage of the time for series trading between $0.03 and $3.00 (for options whose underlying stock's previous trading day's last sale price was less than or equal to $100) and between $0.10 and $3.00 (for options whose underlying stock's previous trading day's last sale price was greater than $100) in premium in each of the front two expiration months. The specified percentage is at least 80% but lower than 85% of the time for Tier 1, at least 85% but lower than 95% of the time for Tier 2, and at least 95% of the time for Tier 3. A Market Maker's single best and single worst quoting days each month based on the front two expiration months, on a per symbol basis, will be excluded in calculating whether a Market Maker qualifies for this rebate, if doing so will qualify a Market Maker for the rebate.
6. Market Maker fees are subject to tier discounts, as provided in Section IV.C.
7. The index option fees apply only to NDX. These fees are assessed to all executions in NDX.
8. This fee applies to Market Maker orders sent to the Exchange by Electronic Access Members.
9. [Priority Customer ADV includes all volume in all symbols and order types. All eligible volume from affiliated Members will be aggregated in determining ADV, provided there is at least 75% common ownership between the Members as reflected on each Member's Form BD, Schedule A. For purposes of determining Priority Customer ADV, any day that the regular order book is not open for the entire trading day or the Exchange instructs members in writing to route their orders to other markets may be excluded from such calculation; provided that the Exchange will only remove the day for members that would have a lower ADV with the day included.] Reserved.
10. A $0.30 per contract fee applies when trading against Priority Customer complex orders that leg into the regular order book. There will be no fee charged or rebate provided when trading against non-Priority Customer complex orders that leg into the regular order book.
11. A $0.30 per contract fee applies when trading against Priority Customer complex orders that leg into the regular order book. The regular $0.10 per contract fee applies when trading against non-Priority Customer complex orders that leg into the regular order book.
12. [PIM orders of more than 100 contracts will pay the Fee for Crossing Orders.] Reserved.
13. Other than for Priority Customer orders, this fee is [$0.03] $0.05 per contract for orders executed by Members that execute an ADV of 7,500 or more contracts in the PIM [have an ADV of 20,000 or more Priority Customer contracts] in a given month [executed in the PIM]. [See footnote 9 above.] Members that execute an ADV of 12,500 or more contracts in the PIM will not be charged a fee. [This] The discounted fees [is] are applied retroactively to all eligible PIM volume in that month once the threshold has been reached.
14. This rebate is $0.16 per contract in SPY and QQQ, except when trading against complex orders that leg into the regular book under footnote 10 above. A Market Maker that achieves Tier 2 Market Maker Plus in either SPY or QQQ will receive this rebate in both SPY and QQQ.
15. This rebate is $0.20 per contract in SPY and QQQ, except when trading against complex orders that leg into the regular book under footnote 10 above. A Market Maker that achieves Tier 3 Market Maker Plus in either SPY or QQQ will receive this rebate in both SPY and QQQ.

16. Transaction fees applicable to Professional Customers for an order submitted as a Qualified Contingent Cross order and orders executed in the Exchange's Solicited Order Mechanism will be $0.10 per contract.

II. Complex Order Fees and Rebates

Rebates

Market Participant	Rebate for Select Symbols(1)	Rebate for Non-Select Symbols(1)(4)	[PIM Break-up Rebate for Select Symbols(2)]	[PIM Break-up Rebate for Non-Select Symbols(2)]	Facilitation and Solicitation Break-up Rebate for Select Symbols(2)
Market Maker	N/A	N/A	[N/A]	[N/A]	N/A
Non-Nasdaq ISE Market Maker (FarMM)	N/A	N/A	[($0.35)]	[($0.80)]	($0.15)
Firm Proprietary / Broker-Dealer	N/A	N/A	[($0.35)]	[($0.80)]	($0.15)
Professional Customer	N/A	N/A	[($0.35)]	[($0.80)]	($0.15)
Priority Customer Complex ADV 0-14,999(7)(13)	($0.26)	($0.40)	[($0.35)]	[($0.80)]	($0.15)
Priority Customer Complex ADV 15,000-44,999(7)(13)	($0.30)	($0.60)	[($0.35)]	[($0.80)]	($0.15)
Priority Customer Complex ADV 45,000-59,999(7)(13)	($0.36)	($0.70)	[($0.35)]	[($0.80)]	($0.15)
Priority Customer Complex ADV 60,000-74,999(7)(13)	($0.41)	($0.75)	[($0.35)]	[($0.80)]	($0.15)
Priority Customer Complex ADV 75,000-99,999(7)(13)	($0.42)	($0.75)	[($0.35)]	[($0.80)]	($0.15)
Priority Customer Complex ADV 100,000-124,999(7)(13)	($0.44)	($0.80)	[($0.35)]	[($0.80)]	($0.15)
Priority Customer Complex ADV 125,000-224,999(7)(13)	($0.46)	($0.81)	[($0.35)]	[($0.80)]	($0.15)
Priority Customer Complex ADV 225,000+(7)(13)	($0.49)	($0.85)	[($0.35)]	[($0.80)]	($0.15)

Maker Fees

Market Participant	Maker Fee for Select Symbols	Maker Fee for Non-Select Symbols	Maker Fee for Select Symbols when trading against Priority Customer(5)	Maker Fee for non-Select Symbols when trading against Priority Customer(5)
Market Maker	$0.10	$0.20	$0.47(3)	$0.86
Non-Nasdaq ISE Market Maker (FarMM)	$0.20	$0.20	$0.48	$0.88
Firm Proprietary / Broker-Dealer	$0.10	$0.20	$0.48	$0.88
Professional Customer	$0.10	$0.20	$0.48	$0.88
Priority Customer	$0.00	$0.00	$0.00	$0.00

Taker and other Fees							
Market Participant	**Taker Fee for Select Symbols[(5)]**	**Taker Fee for Non-Select Symbols[(5)]**	**Fee for Crossing Orders <u>Except PIM Orders</u> [(6)(10)]**	**Fee for PIM Orders [of 100 or Fewer Contracts] [<u>(6)</u>[(8)](9)]**	**Fee for Responses to Crossing Orders <u>Except PIM Orders</u> for Select Symbols**	**Fee for Responses to Crossing Orders <u>Except PIM Orders</u> for non-Select Symbols**	**<u>Fee for Responses to PIM Orders</u>**
Market Maker	$0.47[(3)]	$0.86	$0.20	[$0.05] <u>$0.10</u>	$0.48	$0.91	<u>$0.20</u>
Non-Nasdaq ISE Market Maker (FarMM)	$0.48	$0.88	$0.20	[$0.05] <u>$0.10</u>	$0.48	$0.96	<u>$0.20</u>
Firm Proprietary / Broker-Dealer	$0.48	$0.88	$0.20	[$0.05] <u>$0.10</u>	$0.48	$0.96	<u>$0.20</u>
Professional Customer	$0.48	$0.88	$0.20[(14)]	[$0.05] <u>$0.10</u>	$0.48	$0.96	<u>$0.20</u>
Priority Customer	$0.00	$0.00	$0.00	$0.00	$0.48	$0.96	<u>$0.20</u>

1. Rebate provided per contract per leg if the order trades with non-Priority Customer orders in the Complex Order Book or trades with quotes and orders on the regular order book.

2. Rebate provided per contract per leg for contracts that are submitted to PIM, Facilitation and Solicitation Mechanisms that do not trade with their contra order except when those contracts trade against pre-existing orders and quotes on the Exchange's orderbooks. The applicable fee is applied to any contracts for which a rebate is provided.

3. This fee is $0.44 per contract for Market Makers with total affiliated Priority Customer Complex ADV of 150,000 or more contracts. All eligible volume from affiliated Members will be aggregated in determining total affiliated Priority Customer Complex ADV, provided there is at least 75% common ownership between the Members as reflected on each Member's Form BD, Schedule A. For purposes of determining Priority Customer Complex ADV, any day that the complex order book is not open for the entire trading day or the Exchange instructs members in writing to route their orders to other markets may be excluded from such calculation; provided that the Exchange will only remove the day for members that would have a lower ADV with the day included.

4. No Priority Customer complex order rebates will be paid for orders in NDX or MNX.

5. Nasdaq ISE Market Makers making or taking liquidity receive a discount of $0.02 when trading against Priority Customer orders preferenced to them in the Complex Order Book in equity options that are able to be listed and traded on more than one options exchange. This discount does not apply to FX Options Symbols or to option classes designated by the Exchange to receive a guaranteed allocation pursuant to Nasdaq ISE Rule 722(b)(3)(i)(B).

6. Firm Proprietary and Non-Nasdaq ISE Market Maker contracts traded are subject to the Crossing Fee Cap, as provided in Section IV.H.

7. The rebate for the highest tier volume achieved is applied retroactively to all eligible Priority Customer Complex volume once the threshold has been reached. For purposes of determining Priority Customer Complex ADV, any day that the complex order book is not open for the entire trading day or the Exchange instructs members in writing to route their orders to other markets may be excluded from such calculation; provided that the Exchange will only remove the day for members that would have a lower ADV with the day included.

8. [PIM orders of more than 100 contracts will pay the Fee for Crossing Orders.] <u>Reserved.</u>

9. Other than for Priority Customer orders, this fee is [$0.03] $0.05 per contract for orders executed by Members that execute an ADV of 7,500 or more contracts in the PIM [have an ADV of 20,000 or more Priority Customer contracts] in a given month [executed in the PIM]. Members that execute an ADV of 12,500 or more contracts in the PIM will not be charged a fee. [This] The discounted fees [is] are applied retroactively to all eligible PIM volume in that month once the threshold has been reached.
10. Fee charged for all legs.
11. Fees apply to the originating and contra order.
12. The Exchange will charge a stock handling fee of $0.0010 per share (capped at $50 per trade) for the stock leg of stock-option orders executed against other stock-option orders in the complex order book.
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.
14. Transaction fees applicable to Professional Customers for an order submitted as a Qualified Contingent Cross order and orders executed in the Exchange's Solicited Order Mechanism will be $0.10 per contract.

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