OMB APPROVAL
OMB Number: 3235-0045 Estimated average burden hours per response............38

Required fields are shown with yellow backgrounds and asterisks.

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

File No.* SR - 2017 - * 77
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) * ☐

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)

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

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 its Schedule of Fees to eliminate Priority Customer complex order rebates for all net zero complex orders and reduce fees for trading against Priority Customer complex orders that leg into the regular order book.

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 * Senior 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 08/01/2017
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, is filing with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change to amend its Schedule of Fees to (1) eliminate Priority Customer complex order rebates for all net zero complex orders without any associated average daily volume requirement, and (2) reduce the maker fee charged to Market Makers and Non-Nasdaq ISE Market Makers for Regular Orders in Select Symbols when trading against Priority Customer complex orders that leg into the regular order book.

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 NASDAQ Stock Market (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:

---

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

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

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 (1) eliminate Priority Customer[2] complex order rebates for all net zero complex orders without any associated average daily volume ("ADV") requirement, and (2) reduce the maker fee charged to Market Makers[3] and Non-Nasdaq ISE Market Makers[4] for Regular Orders in Select Symbols[5] when trading against Priority Customer complex orders that leg into the regular order book. These changes are designed to eliminate rebate arbitrage where market participants enter valueless complex orders solely for the purpose of earning a rebate, and to reduce disincentives for Market Makers to provide liquidity on the Exchange.

---

2 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).

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

4 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.

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

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 per contract that is 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 1,000 contracts in net zero complex orders in a given month. 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 per contract that is within a range of $0.01 credit and $0.01 debit. The Exchange now proposes to eliminate Priority Customer complex order rebates for all net zero complex orders, regardless of whether the order is entered on behalf of originating market participants that execute a specified ADV of net zero complex orders.

Priority Customer complex orders are typically eligible for tiered rebates that range from $0.26 per contract (i.e., for Tier 1) to $0.49 per contract (i.e., for Tier 8) depending on the member's Priority Customer Complex ADV. Pursuant to the provision described above, however, the Exchange does not provide these rebates for net zero complex orders entered on behalf of originating market participants that execute a significant ADV of these orders in a given month. This provision is designed to prevent members from engaging in rebate arbitrage by entering essentially valueless complex orders solely to recover rebates. While net zero 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 or other market participants on the individual legs who pay a fee to trade with this order flow. Market Makers have continued to express concerns about trading against net zero complex orders that leg into the regular market, as offending firms modify their behavior to stay within the ADV requirements set by the Exchange. These Market Makers have indicated that continued interaction with these economically valueless orders impedes their ability to provide liquidity on the Exchange as they are charged to trade against these net zero complex orders when they leg into the regular market and execute against their quotes.

The Exchange believes that it is in the interest of a fair and orderly market to provide appropriate incentives for Market Makers to maintain quality markets. As a result, the Exchange has instituted several programs that are aimed at incentivizing Market Makers to provide liquidity, including, for example, the Market Maker Plus program, which rewards Market Makers for routinely quoting at the national best bid or offer.[6] Despite the Exchange's efforts to date, market participants have continued to enter valueless net zero complex orders and may earn rebates for those orders if they stay within the ADV threshold described in the rule. In particular, today, market participants can reduce their ADV in net zero complex orders and/or split their net zero order flow across multiple originating market participants to stay within the ADV thresholds set by the Exchange, and thereby qualify for Priority Customer complex order rebates. The Exchange believes that it is appropriate at this time to completely remove incentives for trading net zero complex orders by eliminating the current ADV threshold. With this proposed change, all net zero complex orders will be ineligible for Priority Customer complex order rebates. Eliminating the ADV requirement will discourage market participants from engaging in this economically valueless conduct, which impedes Market Makers' ability to maintain quality markets, as no net zero complex orders will be

[6] See ISE Schedule of Fees, Section I., Regular Order Fees and Rebates.

rebate eligible. Priority Customer complex orders that do not meet the definition of a net zero complex order will continue to receive rebates based on the tier achieved.

In addition, the Exchange proposes to reduce the fee charged to Market Makers and Non-Nasdaq ISE Market Makers for Regular Orders in Select Symbols when trading against Priority Customer complex orders that leg into the regular book. Currently, Market Makers (including Market Makers that qualify for Market Maker Plus)[7] and Non-Nasdaq ISE Market Makers are charged a maker fee of $0.30 per contract for Regular Orders in Select Symbols when trading against Priority Customer complex orders that leg into the regular order book.[8] This higher maker fee was originally adopted because the Exchange pays a rebate to Priority Customer complex orders that leg into the regular order book. With the changes described above, the Exchange believes that it is appropriate to revisit this fee, and now proposes to reduce the fee to $0.10 per contract.

---

7 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.

8 Market Makers that qualify for Market Maker Plus are not charged a fee or provided a rebate when trading against non-Priority Customer complex orders that leg into the regular order book. Other Market Makers and Non-Nasdaq ISE Market Makers are charged the regular $0.10 per contract fee when trading against non-Priority Customer complex orders that leg into the regular order book.

This change will reduce disincentives for Market Makers to provide liquidity to the benefit of all market participants that trade on the Exchange.[9]

b. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[10] in general, and Section 6(b)(4) of the Act,[11] 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 it is reasonable and equitable to remove the ADV threshold from the net zero provision in the Schedule of Fees as this change 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. With the current provision, offending firms have repeatedly found ways to continue to submit these economically valueless orders to the detriment of the Exchange and market participants that trade on the Exchange. The continued submission of these net zero complex orders by a handful of market participants 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 eliminating the ADV threshold will take away the incentives for firms to

9 With the proposed fee reduction, Market Makers (other than those that qualify for Market Maker Plus) and Non-Nasdaq ISE Market Makers will be charged a maker fee of $0.10 per contract for Regular Orders in Select Symbols regardless of the order on the other side of the trade. The Exchange therefore proposes to effectuate this change by deleting footnote 11.

10 15 U.S.C. 78f.

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

continue to enter net zero complex orders purely to earn a rebate, thereby reducing the cost of these trades to the Exchange and its members.

Market Makers may be impeded in providing liquidity when doing so may result in trading against these net zero complex orders that leg into the regular market. The Exchange believes that it is important that Market Makers be properly incentivized to maintain quality markets, and is therefore proposing to take steps to eliminate the incentives for market participants to enter net zero complex orders. 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 eliminating the ADV requirement in this provision will discourage market participants from entering valueless net zero complex orders, which are entered for the sole purpose of earning a rebate. As a result, the Exchange believes that Market Makers will be aided in their role of providing liquidity and maintaining quality markets to the benefit of all market participants that trade on the Exchange.

Furthermore, the Exchange believes that the proposed 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, regardless of their ADV in this activity. Thus, all market participants that enter net zero complex orders will be uniformly denied rebates for those orders. To the extent that those market participants execute non-net zero complex orders, however, they will continue to receive Priority Customer complex order rebates based on their ADV in that activity. The Exchange does not believe that it is unfairly discriminatory to eliminate the ADV threshold for net zero complex orders since the elimination of this threshold means that no market participants will receive rebates for these orders.

The Exchange also believes that it is reasonable and equitable reduce the maker fee charged to Market Makers and Non-Nasdaq ISE Market Makers for Regular Orders in Select Symbols when trading against Priority Customer complex orders that leg into the regular order book. With the changes described above related to net zero complex orders, which will eliminate rebates for certain Priority Customer complex orders that leg in to the regular order book, the Exchange believes that it is appropriate to also reduce the amount charged to Market Makers when trading against such Priority Customer complex orders in the regular order book. Furthermore, the Exchange believes that reducing the fee charged to Market Makers and Non-Nasdaq ISE Makers when trading against Priority Customer complex order that leg into the regular order book will increase incentives for those firms to provide liquidity to the benefit of all market participants that trade on the Exchange. The Exchange does not believe that this change is unfairly discriminatory as the same $0.10 per contract maker fee applies to Market Makers (other than those that qualify for Market Maker Plus) and Non-Nasdaq ISE Market Makers when trading against other orders in these symbols, and is also the same as the maker fees charged to Firm Proprietary,[12] Broker-Dealer,[13] and Professional Customer orders.[14]

---

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

13 A "Broker-Dealer" order is an order submitted by a member for a broker-dealer account that is not its own proprietary account.

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

In accordance with Section 6(b)(8) of the Act,[15] 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 eliminating the ADV requirement applicable to the Exchange's net zero complex order provision in the Schedule of Fees, 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. Rather than impede competition, the Exchange believes that this change will enhance competition by enabling Market Makers to step up and maintain quality markets to the benefit of all market participants that trade on the Exchange. In addition, the reduction of Market Maker and Non-Nasdaq ISE Market Maker fees for trading against Priority Customer complex orders that leg into the regular order book will also further competition as the fees are consistent with those charged to other market participants. 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.

---

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

15 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-2017-77

August__, 2017

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend its Schedule of Fees

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1], and Rule 19b-4 thereunder,[2] notice is hereby given that on August 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 its Schedule of Fees to (1) eliminate Priority Customer complex order rebates for all net zero complex orders without any associated average daily volume requirement, and (2) reduce the maker fee charged to Market Makers and Non-Nasdaq ISE Market Makers for Regular Orders in Select Symbols when trading against Priority Customer complex orders that leg into the regular order book.

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.

---

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

2 17 CFR 240.19b-4.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The purpose of the proposed rule change is to amend the Schedule of Fees to (1) eliminate Priority Customer[3] complex order rebates for all net zero complex orders without any associated average daily volume ("ADV") requirement, and (2) reduce the maker fee charged to Market Makers[4] and Non-Nasdaq ISE Market Makers[5] for Regular Orders in Select Symbols[6] when trading against Priority Customer complex orders that leg into the regular order book. These changes are designed to eliminate rebate arbitrage where market participants enter valueless complex orders solely for the purpose of

---

[3] A "Priority Customer" is a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s), as defined in Nasdaq ISE Rule 100(a)(37A).

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

[5] 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.

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

earning a rebate, and to reduce disincentives for Market Makers to provide liquidity on the Exchange.

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 per contract that is 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 1,000 contracts in net zero complex orders in a given month. 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 per contract that is within a range of $0.01 credit and $0.01 debit. The Exchange now proposes to eliminate Priority Customer complex order rebates for all net zero complex orders, regardless of whether the order is entered on behalf of originating market participants that execute a specified ADV of net zero complex orders.

Priority Customer complex orders are typically eligible for tiered rebates that range from $0.26 per contract (i.e., for Tier 1) to $0.49 per contract (i.e., for Tier 8) depending on the member's Priority Customer Complex ADV. Pursuant to the provision described above, however, the Exchange does not provide these rebates for net zero complex orders entered on behalf of originating market participants that execute a significant ADV of these orders in a given month. This provision is designed to prevent members from engaging in rebate arbitrage by entering essentially valueless complex orders solely to recover rebates. While net zero 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 or other market participants on the individual legs who pay a fee to trade with this order flow. Market Makers have continued to express concerns about trading against net zero complex orders that leg into the regular market, as offending firms modify their behavior to stay within the ADV requirements set by the Exchange. These Market Makers have indicated that continued interaction with these economically valueless orders impedes their ability to provide liquidity on the Exchange as they are charged to trade against these net zero complex orders when they leg into the regular market and execute against their quotes.

The Exchange believes that it is in the interest of a fair and orderly market to provide appropriate incentives for Market Makers to maintain quality markets. As a result, the Exchange has instituted several programs that are aimed at incentivizing Market Makers to provide liquidity, including, for example, the Market Maker Plus program, which rewards Market Makers for routinely quoting at the national best bid or offer.[7] Despite the Exchange's efforts to date, market participants have continued to enter valueless net zero complex orders and may earn rebates for those orders if they stay within the ADV threshold described in the rule. In particular, today, market participants can reduce their ADV in net zero complex orders and/or split their net zero order flow across multiple originating market participants to stay within the ADV thresholds set by the Exchange, and thereby qualify for Priority Customer complex order rebates. The Exchange believes that it is appropriate at this time to completely remove incentives for trading net zero complex orders by eliminating the current ADV threshold. With this proposed change, all net zero complex orders will be ineligible for Priority Customer complex order rebates. Eliminating the ADV requirement will discourage market

---

7 See ISE Schedule of Fees, Section I., Regular Order Fees and Rebates.

participants from engaging in this economically valueless conduct, which impedes Market Makers' ability to maintain quality markets, as no net zero complex orders will be rebate eligible. Priority Customer complex orders that do not meet the definition of a net zero complex order will continue to receive rebates based on the tier achieved.

In addition, the Exchange proposes to reduce the fee charged to Market Makers and Non-Nasdaq ISE Market Makers for Regular Orders in Select Symbols when trading against Priority Customer complex orders that leg into the regular book. Currently, Market Makers (including Market Makers that qualify for Market Maker Plus)[8] and Non-Nasdaq ISE Market Makers are charged a maker fee of $0.30 per contract for Regular Orders in Select Symbols when trading against Priority Customer complex orders that leg into the regular order book.[9] This higher maker fee was originally adopted because the Exchange pays a rebate to Priority Customer complex orders that leg into the regular order book. With the changes described above, the Exchange believes that it is appropriate to revisit this fee, and now proposes to reduce the fee to $0.10 per contract.

---

[8] 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.

[9] Market Makers that qualify for Market Maker Plus are not charged a fee or provided a rebate when trading against non-Priority Customer complex orders that leg into the regular order book. Other Market Makers and Non-Nasdaq ISE Market Makers are charged the regular $0.10 per contract fee when trading against non-Priority Customer complex orders that leg into the regular order book.

This change will reduce disincentives for Market Makers to provide liquidity to the benefit of all market participants that trade on the Exchange.[10]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[11] in general, and Section 6(b)(4) of the Act,[12] 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 it is reasonable and equitable to remove the ADV threshold from the net zero provision in the Schedule of Fees as this change 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. With the current provision, offending firms have repeatedly found ways to continue to submit these economically valueless orders to the detriment of the Exchange and market participants that trade on the Exchange. The continued submission of these net zero complex orders by a handful of market participants 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 eliminating the ADV threshold will take away the incentives for firms to

---

10 With the proposed fee reduction, Market Makers (other than those that qualify for Market Maker Plus) and Non-Nasdaq ISE Market Makers will be charged a maker fee of $0.10 per contract for Regular Orders in Select Symbols regardless of the order on the other side of the trade. The Exchange therefore proposes to effectuate this change by deleting footnote 11.

11 15 U.S.C. 78f.

12 15 U.S.C. 78f(b)(4).

continue to enter net zero complex orders purely to earn a rebate, thereby reducing the cost of these trades to the Exchange and its members.

Market Makers may be impeded in providing liquidity when doing so may result in trading against these net zero complex orders that leg into the regular market. The Exchange believes that it is important that Market Makers be properly incentivized to maintain quality markets, and is therefore proposing to take steps to eliminate the incentives for market participants to enter net zero complex orders. 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 eliminating the ADV requirement in this provision will discourage market participants from entering valueless net zero complex orders, which are entered for the sole purpose of earning a rebate. As a result, the Exchange believes that Market Makers will be aided in their role of providing liquidity and maintaining quality markets to the benefit of all market participants that trade on the Exchange.

Furthermore, the Exchange believes that the proposed 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, regardless of their ADV in this activity. Thus, all market participants that enter net zero complex orders will be uniformly denied rebates for those orders. To the extent that those market participants execute non-net zero complex orders, however, they will continue to receive Priority Customer complex order rebates based on their ADV in that activity. The Exchange does not believe that it is unfairly discriminatory to eliminate the ADV threshold for net zero complex orders since the elimination of this threshold means that no market participants will receive rebates for these orders.

The Exchange also believes that it is reasonable and equitable reduce the maker fee charged to Market Makers and Non-Nasdaq ISE Market Makers for Regular Orders in Select Symbols when trading against Priority Customer complex orders that leg into the regular order book. With the changes described above related to net zero complex orders, which will eliminate rebates for certain Priority Customer complex orders that leg in to the regular order book, the Exchange believes that it is appropriate to also reduce the amount charged to Market Makers when trading against such Priority Customer complex orders in the regular order book. Furthermore, the Exchange believes that reducing the fee charged to Market Makers and Non-Nasdaq ISE Makers when trading against Priority Customer complex order that leg into the regular order book will increase incentives for those firms to provide liquidity to the benefit of all market participants that trade on the Exchange. The Exchange does not believe that this change is unfairly discriminatory as the same $0.10 per contract maker fee applies to Market Makers (other than those that qualify for Market Maker Plus) and Non-Nasdaq ISE Market Makers when trading against other orders in these symbols, and is also the same as the maker fees charged to Firm Proprietary,[13] Broker-Dealer,[14] and Professional Customer orders.[15]

---

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

[14] A "Broker-Dealer" order is an order submitted by a member for a broker-dealer account that is not its own proprietary account.

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

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

In accordance with Section 6(b)(8) of the Act,[16] 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 eliminating the ADV requirement applicable to the Exchange's net zero complex order provision in the Schedule of Fees, 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. Rather than impede competition, the Exchange believes that this change will enhance competition by enabling Market Makers to step up and maintain quality markets to the benefit of all market participants that trade on the Exchange. In addition, the reduction of Market Maker and Non-Nasdaq ISE Market Maker fees for trading against Priority Customer complex orders that leg into the regular order book will also further competition as the fees are consistent with those charged to other market participants. 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.

---

[16] 15 U.S.C. 78f(b)(8).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[17] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-ISE-2017-77 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-ISE-2017-77. This file number should be included on the subject line if e-mail is used. To help the Commission process

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

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-2017-77 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.[18]

Eduardo A. Aleman
Assistant Secretary

---

[18] 17 CFR 200.30-3(a)(12).

Deleted text is [bracketed]. New text is underlined. **EXHIBIT 5**

* * * * *

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 [1][2][13]	Fee for Responses to Crossing Orders Except PIM Orders	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	$0.10	$0.50	$0.20	N/A
Tier 2 Market Maker Plus[5]*	($0.18)[10][14]	$0.44	$0.20	$0.10	$0.50	$0.20	N/A
Tier 3 Market Maker Plus[5]*	($0.22)[10][15]	$0.44	$0.20	$0.10	$0.50	$0.20	N/A
Market Maker[8]	$0.10 [(11)]	$0.44	$0.20	$0.10	$0.50	$0.20	N/A
Non-Nasdaq ISE Market Maker (FarMM)	$0.10 [(11)]	$0.45	$0.20	$0.10	$0.50	$0.20	($0.15)
Firm Proprietary / Broker-Dealer	$0.10	$0.45	$0.20	$0.10	$0.50	$0.20	($0.15)
Professional Customer	$0.10	$0.45	$0.20[16]	$0.10	$0.50	$0.20	($0.15)
Priority Customer	$0.00	$0.44[3]	$0.00	$0.00	$0.50	$0.20	($0.15)

* * * * *

10. A [$0.30] $0.10 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.] Reserved.

* * * * *

II. Complex Order Fees and Rebates

* * * * *

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 1,000 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.

* * * * *