

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 29	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - 2017 - * 93	Amendment No. (req. for Amendments *)
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Filing by Nasdaq ISE, LLC
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
			Rule		
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input checked="" type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>
Section 3C(b)(2) * <input type="checkbox"/>	

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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Description

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

Proposed rule change to amend the Exchange provisions for excluding a day from its volume calculations for purposes of determining volume based pricing, and to adopt language that allows the Exchange to remove a day from Market Maker Plus tiers whenever a day is removed from the Exchange volume calculations.

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.

(Title *)

Date 10/11/2017
 By Edward S. Knight
 (Name *)

Executive Vice President and General Counsel

edward.knight@nasdaq.com

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.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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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 *

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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

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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

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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

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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

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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 Exchange’s provisions for excluding a day from its volume calculations for purposes of determining volume based pricing, and to adopt language that allows the Exchange to remove a day from Market Maker Plus tiers whenever a day is removed from the Exchange’s volume calculations.

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 September 19, 2017. 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

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 Exchange's provisions for excluding a day from its volume calculations for purposes of determining volume based pricing, and to adopt language that allows the Exchange to remove a day from Market Maker Plus tiers whenever a day is removed from the Exchange's volume calculations.

To avoid penalizing members when aberrant low volume days result from systems or other issues at the Exchange, or where the Exchange closes early for holiday observance, the Exchange has language in its Schedule of Fees allowing it to exclude certain days from its average daily volume ("ADV") calculations. Currently, language in the Exchange's Schedule of Fees provides that, for purposes of determining ADV for certain incentive programs,³ any day that the Exchange, or complex order book, as appropriate, 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. The proposed rule change would: (1) apply the rules

³ The current language in the Schedule of Fees applies to the calculation of Priority Customer Complex ADV used to determine pricing for Priority Customer complex order tiers and a discounted Market Maker taker fee in complex orders. See Schedule of Fees, II. Complex Order Fees and Rebates. It also applies to the calculation of a member's ADV in unsolicited Crossing Orders for the Member Order Routing Program. See Schedule of Fees, IV. Other Options Fees and Rebates, E. Member Order Routing Program.

for excluding a day to all ADV calculations rather than specified incentive programs,⁴ and (2) remove the Exchange's ability to separately exclude a day for the regular and complex order books.⁵ As proposed, with these two changes, the Exchange's rules will state that any day that the market 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 the ADV calculation; provided that the Exchange will only remove the day for members that would have a lower ADV with the day included. The Exchange will inform members of any day that is to be excluded from its ADV calculations through an Options Trader Alert.

Currently, the Exchange's rules for removing a day from its ADV calculations apply to specific ADV calculations. In particular, the Exchange can remove a day from tier calculations for the following programs: (1) Priority Customer complex order rebates,⁶ and a Market Maker taker fee discount in complex orders that is also based on Priority Customer Complex ADV;⁷ and (2) Member Order Routing Program rebates.⁸

⁴ See id. Since the proposed language will now apply to all current and future programs administered by the Exchange that are based on ADV, the Exchange proposes to move it to the Preface of its Schedule of Fees. For example, PIM and FX Options tiered pricing, currently in the Schedule of Fees at Sections III would now be subject to the proposed rule change in the Preface as a result of this rule change.

⁵ See Securities Exchange Act Release No. 73601 (November 11, 2014), 79 FR 69170 (November 20, 2014) (SR-ISE-2014-51).

⁶ The Exchange provides ADV based tiered rebates to Priority Customer complex orders that trade with non-Priority Customer orders in the complex order book or trade with quotes and orders on the regular order book. See Section I and II of ISE's Schedule of Fees.

⁷ The Market Maker complex order taker fee in Select Symbols fee is reduced from \$0.47 per contract to \$0.44 per contract for Market Makers with total affiliated

The Exchange now believes that it is appropriate to expand this provision to cover all ADV calculations rather than limit it to specific enumerated programs. Applying this rule to all ADV calculations will benefit members by permitting the Exchange to exclude aberrant low volume days from its ADV calculations regardless of the specific pricing program impacted. As is the case today, the Exchange will only remove the day for members that would have a lower ADV with the day included.

Furthermore, the current rules for removing a day may be applied separately for the regular and complex order books, allowing the Exchange to remove a day based on separate impact to the regular or complex market. In connection with the changes discussed above, the Exchange also proposes to eliminate the ability to separately exclude a day for the regular and complex order books by adding the general interpretation to the Preface section so that it applies universally. Although the Exchange had previously filed rule changes that consider the regular and complex order books separately, the Exchange no longer believes that it is necessary to do so, and will therefore not exclude days where, for example, only the complex order book experiences a systems issue. With this rule change the Exchange would generally exclude days for either the simple or complex order books where any systems issue occurs. The Exchange' tiers seek to incentive market participants to transact a greater amount of liquidity on the ISE markets. The Exchange does not desire to disincentive a member simply because the day is shortened due to a holiday or because the market has

Priority Customer Complex ADV of 150,000 or more contracts. See Section I of ISE's Schedule of Fees.

⁸ The Member Order Routing Program is a program that provides tiered rebates to order routing firms that select the Exchange as the default routing destination for unsolicited Crossing Orders. See Section IV, E of the Schedule of Fees.

experienced an unexpected closure. The proposal seeks to provide market participants with the ability to plan for and in the case of unexpected events, not be harmed by shortened or closed days. By not considering the simple and complex order books separately, the Exchange believes that market participants will be incentivized to send both simple and complex order flow without concern on days whether a market event has occurred. This rule change will simplify the operation of this rule. The Exchange notes that NASDAQ PHLX, LLC (“Phlx”), which also trades complex orders, excludes a day for the entire market rather than only for a specific segment of order flow.⁹

Finally, the Exchange operates a Market Maker Plus program that provides tiered rebates to Market Makers¹⁰ in Select Symbols¹¹ based on time at the national best bid or offer (“NBBO”). Specifically, a Market Maker Plus is a Market Maker who is on the NBBO 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 3.¹² Market Makers that qualify for Market Maker Plus receive a

⁹ See the Preface to Phlx’s Pricing Schedule.

¹⁰ The term “Market Makers” refers to “Competitive Market Makers” and “Primary Market Makers” collectively. See ISE Rule 100(a)(25).

¹¹ “Select Symbols” are options overlying all symbols listed on the Nasdaq ISE that are in the Penny Pilot Program.

¹² 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

maker rebate for regular orders in Select Symbols of \$0.15 per contract for Tier 1, \$0.18 per contract for Tier 2,¹³ and \$0.22 per contract for Tier 3,¹⁴ instead of the regular maker fee of \$0.10 per contract.¹⁵ Market Maker Plus is designed to reward Maker Makers that make quality markets. As discussed above, however, member participation, including Market Maker participation, is generally lower on days when the Exchange is experiencing a system or other issue that results in the market not being open for the entire trading day or the Exchange instructing members in writing to route their orders to other markets. Similar to the treatment described above for ADV calculations, the Exchange similarly believes that it is appropriate to remove these days from the Market Maker Plus calculation to avoid penalizing Market Makers on days that the Exchange is experiencing an issue. The Exchange therefore proposes to adopt language that provides that, other than days where the Exchange closes early for holiday observance, any day that the market 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 the Market Maker

calculating whether a Market Maker qualifies for this rebate, if doing so will qualify a Market Maker for the rebate.

- ¹³ This rebate is \$0.16 per contract in SPY and QQQ, except when trading against complex orders that leg into the regular book. A Market Maker that achieves Tier 2 Market Maker Plus in either SPY or QQQ will receive this rebate in both SPY and QQQ.
- ¹⁴ 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.
- ¹⁵ A \$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.

Plus tier calculation; provided that the Exchange will only remove the day for members that would have a lower time at the NBBO for the specified series with the day included. The proposed rule text would allow the Exchange to provide relief to Market Makers as to the Market Maker Plus tier calculation similar to that provided for ADV tiers, except that the Exchange does not propose to use this authority to remove days from the Market Maker Plus tier calculation where the Exchange closes early for holiday observance. While Market Makers can plan for known events, such as a holiday, they are unable to plan for market events which may close the market for part of a trading day. The Exchange believes that permitting the exception for the unanticipated event therefore provides flexibility to Market Makers in anticipating where to send order flow. The Exchange desires to incentivize Market Makers to send order flow to ISE to meet their tier requirements.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁶ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁷ in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed change to the ADV calculation is reasonable and equitable as it provides a new framework for removing days from the Exchange's volume calculations that the Exchange believes is beneficial to members. The

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(4) and (5).

proposed rule change would apply the rules for excluding a day to all ADV calculations rather than specified incentive programs, thereby further protecting members if the Exchange experiences a systems or other issue that results in a day being excluded from the Exchange's ADV calculations. Without this change, members would only have the day excluded for the specific ADV based pricing programs described in this filing, and would not get the benefit for other un-enumerated programs. While the Exchange had previously filed to separately consider the regular and complex books, the Exchange no longer believes that this authority is necessary. By not considering the simple and complex order books separately, the Exchange believes that market participants will be incentivized to send both simple and complex order flow without concern on days whether a market event has occurred. The Exchange believes that this change will make this rule easier to administer without having a significant impact on members. Moreover, the Exchange believes that the proposed changes preserve the Exchange's intent behind adopting volume-based pricing. Finally, the Exchange further believes that the proposed change is not unfairly discriminatory because it applies equally to all members and ADV calculations.

The Exchange also believes that the proposed language for Market Maker Plus tier calculations is reasonable and equitable since it would allow the Exchange to remove a day from its Market Maker Plus tier calculations in similar circumstances as the Exchange currently removes days from its ADV calculations, and only when beneficial to the member. The Exchange believes that this proposed change is appropriate as it avoids penalizing Market Makers on days where the Exchange is experiencing a systems or other issue. Without this change, Market Makers that are wary of participation on the

Exchange following an issue at the Exchange could fall into a lower Market Maker Plus tier, resulting in an effective cost increase for those members. The proposed language for removing a day from the Market Maker Plus tier calculation mirrors the language currently in place for the ADV calculation, except that the Exchange proposes that it will not remove days where the Exchange closes early for holiday observance. While Market Makers can plan for known events, such as a holiday, they are unable to plan for market events which may close the market for part of a trading day. The Exchange believes that permitting the exception for the unanticipated event therefore provides flexibility to Market Makers in anticipating where to send order flow. The Exchange desires to incentivize Market Makers to send order flow to ISE to meet their tier requirements. The Exchange believes that this is appropriate to incentivize Market Makers to continue making quality markets where the Exchange is not experiencing an issue and merely closes early for holiday observance. Finally, the Exchange believes that the proposed language for the Market Maker Plus tier calculation is not unfairly discriminatory as all Market Makers have the ability to qualify for Market Maker Plus by making quality markets on the Exchange and can therefore benefit from the proposed changes. As explained above, all members also benefit from a similar provision that applies to the Exchange's ADV calculations.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change would apply the rules for excluding a day to all ADV calculations rather than specified incentive programs, thereby further protecting members if the Exchange experiences a systems or other issue that results in a day being excluded

from the Exchange's ADV calculations. This rule change does not impose an undue burden on competition because without this change, members would only have the day excluded for the specific ADV based pricing programs described in this filing, and would not get the benefit for other un-enumerated programs. The Exchange will uniformly apply the proposed language related to ADV based pricing programs. The proposal to not consider the simple and complex order books separately does not impose an undue burden on competition because the Exchange would uniformly calculate the ADV based pricing programs in a uniform manner for all market participants. The Exchange believes that this change will make this rule easier to administer without having a significant impact on members. Moreover, the Exchange believes that the proposed changes preserve the Exchange's intent behind adopting volume-based pricing. Finally, the Exchange further believes that the proposed change is not unfairly discriminatory because it applies equally to all members and ADV calculations.

The proposed rule change is designed to adopt a new provision covering the Market Maker Plus tier calculation. The proposed language for removing a day from the Market Maker Plus tier calculation mirrors the language currently in place for the ADV calculation, except that the Exchange proposes that it will not remove days where the Exchange closes early for holiday observance. While Market Makers can plan for known events, such as a holiday, they are unable to plan for market events which may close the market for part of a trading day. The Exchange believes that permitting the exception for the unanticipated event therefore provides flexibility to Market Makers in anticipating where to send order flow. The Exchange desires to incentivize Market Makers to send order flow to ISE to meet their tier requirements. The Exchange believes that the

proposed modifications to its ADV and Market Maker Plus tier calculations are pro-competitive and will result in lower total costs to end users, a positive outcome of competitive markets.

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-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

¹⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

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

Not applicable.

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-2017-93)

October __, 2017

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rules for Excluding Days from the Exchange's ADV and Market Maker Plus Tier Calculations in the 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 October 11, 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 Exchange's provisions for excluding a day from its volume calculations for purposes of determining volume based pricing, and to adopt language that allows the Exchange to remove a day from Market Maker Plus tiers whenever a day is removed from the Exchange's volume calculations.

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 Exchange's provisions for excluding a day from its volume calculations for purposes of determining volume based pricing, and to adopt language that allows the Exchange to remove a day from Market Maker Plus tiers whenever a day is removed from the Exchange's volume calculations.

To avoid penalizing members when aberrant low volume days result from systems or other issues at the Exchange, or where the Exchange closes early for holiday observance, the Exchange has language in its Schedule of Fees allowing it to exclude certain days from its average daily volume ("ADV") calculations. Currently, language in the Exchange's Schedule of Fees provides that, for purposes of determining ADV for certain incentive programs,³ any day that the Exchange, or complex order book, as

³ The current language in the Schedule of Fees applies to the calculation of Priority Customer Complex ADV used to determine pricing for Priority Customer complex order tiers and a discounted Market Maker taker fee in complex orders. See Schedule of Fees, II. Complex Order Fees and Rebates. It also applies to the calculation of a member's ADV in unsolicited Crossing Orders for the Member

appropriate, 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. The proposed rule change would: (1) apply the rules for excluding a day to all ADV calculations rather than specified incentive programs,⁴ and (2) remove the Exchange's ability to separately exclude a day for the regular and complex order books.⁵ As proposed, with these two changes, the Exchange's rules will state that any day that the market 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 the ADV calculation; provided that the Exchange will only remove the day for members that would have a lower ADV with the day included. The Exchange will inform members of any day that is to be excluded from its ADV calculations through an Options Trader Alert.

Currently, the Exchange's rules for removing a day from its ADV calculations apply to specific ADV calculations. In particular, the Exchange can remove a day from tier calculations for the following programs: (1) Priority Customer complex order

Order Routing Program. See Schedule of Fees, IV. Other Options Fees and Rebates, E. Member Order Routing Program.

⁴ See id. Since the proposed language will now apply to all current and future programs administered by the Exchange that are based on ADV, the Exchange proposes to move it to the Preface of its Schedule of Fees. For example, PIM and FX Options tiered pricing, currently in the Schedule of Fees at Sections III would now be subject to the proposed rule change in the Preface as a result of this rule change.

⁵ See Securities Exchange Act Release No. 73601 (November 11, 2014), 79 FR 69170 (November 20, 2014) (SR-ISE-2014-51).

rebates,⁶ and a Market Maker taker fee discount in complex orders that is also based on Priority Customer Complex ADV;⁷ and (2) Member Order Routing Program rebates.⁸ The Exchange now believes that it is appropriate to expand this provision to cover all ADV calculations rather than limit it to specific enumerated programs. Applying this rule to all ADV calculations will benefit members by permitting the Exchange to exclude aberrant low volume days from its ADV calculations regardless of the specific pricing program impacted. As is the case today, the Exchange will only remove the day for members that would have a lower ADV with the day included.

Furthermore, the current rules for removing a day may be applied separately for the regular and complex order books, allowing the Exchange to remove a day based on separate impact to the regular or complex market. In connection with the changes discussed above, the Exchange also proposes to eliminate the ability to separately exclude a day for the regular and complex order books by adding the general interpretation to the Preface section so that it applies universally. Although the Exchange had previously filed rule changes that consider the regular and complex order books separately, the Exchange no longer believes that it is necessary to do so, and will

⁶ The Exchange provides ADV based tiered rebates to Priority Customer complex orders that trade with non-Priority Customer orders in the complex order book or trade with quotes and orders on the regular order book. See Section I and II of ISE's Schedule of Fees.

⁷ The Market Maker complex order taker fee in Select Symbols fee is reduced from \$0.47 per contract to \$0.44 per contract for Market Makers with total affiliated Priority Customer Complex ADV of 150,000 or more contracts. See Section I of ISE's Schedule of Fees.

⁸ The Member Order Routing Program is a program that provides tiered rebates to order routing firms that select the Exchange as the default routing destination for unsolicited Crossing Orders. See Section IV, E of the Schedule of Fees.

therefore not exclude days where, for example, only the complex order book experiences a systems issue. With this rule change the Exchange would generally exclude days for either the simple or complex order books where any systems issue occurs. The Exchange' tiers seek to incentive market participants to transact a greater amount of liquidity on the ISE markets. The Exchange does not desire to disincentive a member simply because the day is shortened due to a holiday or because the market has experienced an unexpected closure. The proposal seeks to provide market participants with the ability to plan for and in the case of unexpected events, not be harmed by shortened or closed days. By not considering the simple and complex order books separately, the Exchange believes that market participants will be incentivized to send both simple and complex order flow without concern on days whether a market event has occurred. This rule change will simplify the operation of this rule. The Exchange notes that NASDAQ PHLX, LLC ("Phlx"), which also trades complex orders, excludes a day for the entire market rather than only for a specific segment of order flow.⁹

Finally, the Exchange operates a Market Maker Plus program that provides tiered rebates to Market Makers¹⁰ in Select Symbols¹¹ based on time at the national best bid or offer ("NBBO"). Specifically, a Market Maker Plus is a Market Maker who is on the NBBO 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

⁹ See the Preface to Phlx's Pricing Schedule.

¹⁰ The term "Market Makers" refers to "Competitive Market Makers" and "Primary Market Makers" collectively. See ISE Rule 100(a)(25).

¹¹ "Select Symbols" are options overlying all symbols listed on the Nasdaq ISE that are in the Penny Pilot Program.

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 3.¹² Market Makers that qualify for Market Maker Plus receive a maker rebate for regular orders in Select Symbols of \$0.15 per contract for Tier 1, \$0.18 per contract for Tier 2,¹³ and \$0.22 per contract for Tier 3,¹⁴ instead of the regular maker fee of \$0.10 per contract.¹⁵ Market Maker Plus is designed to reward Market Makers that make quality markets. As discussed above, however, member participation, including Market Maker participation, is generally lower on days when the Exchange is experiencing a system or other issue that results in the market not being open for the entire trading day or the Exchange instructing members in writing to route their orders to other markets. Similar to the treatment described above for ADV calculations, the

¹² 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.

¹³ This rebate is \$0.16 per contract in SPY and QQQ, except when trading against complex orders that leg into the regular book. A Market Maker that achieves Tier 2 Market Maker Plus in either SPY or QQQ will receive this rebate in both SPY and QQQ.

¹⁴ 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.

¹⁵ A \$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.

Exchange similarly believes that it is appropriate to remove these days from the Market Maker Plus calculation to avoid penalizing Market Makers on days that the Exchange is experiencing an issue. The Exchange therefore proposes to adopt language that provides that, other than days where the Exchange closes early for holiday observance, any day that the market 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 the Market Maker Plus tier calculation; provided that the Exchange will only remove the day for members that would have a lower time at the NBBO for the specified series with the day included. The proposed rule text would allow the Exchange to provide relief to Market Makers as to the Market Maker Plus tier calculation similar to that provided for ADV tiers, except that the Exchange does not propose to use this authority to remove days from the Market Maker Plus tier calculation where the Exchange closes early for holiday observance. While Market Makers can plan for known events, such as a holiday, they are unable to plan for market events which may close the market for part of a trading day. The Exchange believes that permitting the exception for the unanticipated event therefore provides flexibility to Market Makers in anticipating where to send order flow. The Exchange desires to incentivize Market Makers to send order flow to ISE to meet their tier requirements.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁶ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁷

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(4) and (5).

in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed change to the ADV calculation is reasonable and equitable as it provides a new framework for removing days from the Exchange's volume calculations that the Exchange believes is beneficial to members. The proposed rule change would apply the rules for excluding a day to all ADV calculations rather than specified incentive programs, thereby further protecting members if the Exchange experiences a systems or other issue that results in a day being excluded from the Exchange's ADV calculations. Without this change, members would only have the day excluded for the specific ADV based pricing programs described in this filing, and would not get the benefit for other un-enumerated programs. While the Exchange had previously filed to separately consider the regular and complex books, the Exchange no longer believes that this authority is necessary. By not considering the simple and complex order books separately, the Exchange believes that market participants will be incentivized to send both simple and complex order flow without concern on days whether a market event has occurred. The Exchange believes that this change will make this rule easier to administer without having a significant impact on members. Moreover, the Exchange believes that the proposed changes preserve the Exchange's intent behind adopting volume-based pricing. Finally, the Exchange further believes that the proposed change is not unfairly discriminatory because it applies equally to all members and ADV calculations.

The Exchange also believes that the proposed language for Market Maker Plus tier calculations is reasonable and equitable since it would allow the Exchange to remove a day from its Market Maker Plus tier calculations in similar circumstances as the Exchange currently removes days from its ADV calculations, and only when beneficial to the member. The Exchange believes that this proposed change is appropriate as it avoids penalizing Market Makers on days where the Exchange is experiencing a systems or other issue. Without this change, Market Makers that are wary of participation on the Exchange following an issue at the Exchange could fall into a lower Market Maker Plus tier, resulting in an effective cost increase for those members. The proposed language for removing a day from the Market Maker Plus tier calculation mirrors the language currently in place for the ADV calculation, except that the Exchange proposes that it will not remove days where the Exchange closes early for holiday observance. While Market Makers can plan for known events, such as a holiday, they are unable to plan for market events which may close the market for part of a trading day. The Exchange believes that permitting the exception for the unanticipated event therefore provides flexibility to Market Makers in anticipating where to send order flow. The Exchange desires to incentivize Market Makers to send order flow to ISE to meet their tier requirements. The Exchange believes that this is appropriate to incentivize Market Makers to continue making quality markets where the Exchange is not experiencing an issue and merely closes early for holiday observance. Finally, the Exchange believes that the proposed language for the Market Maker Plus tier calculation is not unfairly discriminatory as all Market Makers have the ability to qualify for Market Maker Plus by making quality markets on the Exchange and can therefore benefit from the proposed changes. As

explained above, all members also benefit from a similar provision that applies to the Exchange's ADV calculations.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change would apply the rules for excluding a day to all ADV calculations rather than specified incentive programs, thereby further protecting members if the Exchange experiences a systems or other issue that results in a day being excluded from the Exchange's ADV calculations. This rule change does not impose an undue burden on competition because without this change, members would only have the day excluded for the specific ADV based pricing programs described in this filing, and would not get the benefit for other un-enumerated programs. The Exchange will uniformly apply the proposed language related to ADV based pricing programs. The proposal to not consider the simple and complex order books separately does not impose an undue burden on competition because the Exchange would uniformly calculate the ADV based pricing programs in a uniform manner for all market participants. The Exchange believes that this change will make this rule easier to administer without having a significant impact on members. Moreover, the Exchange believes that the proposed changes preserve the Exchange's intent behind adopting volume-based pricing. Finally, the Exchange further believes that the proposed change is not unfairly discriminatory because it applies equally to all members and ADV calculations.

The proposed rule change is designed to adopt a new provision covering the Market Make Plus tier calculation. The proposed language for removing a day from the Market Maker Plus tier calculation mirrors the language currently in place for the ADV

calculation, except that the Exchange proposes that it will not remove days where the Exchange closes early for holiday observance. While Market Makers can plan for known events, such as a holiday, they are unable to plan for market events which may close the market for part of a trading day. The Exchange believes that permitting the exception for the unanticipated event therefore provides flexibility to Market Makers in anticipating where to send order flow. The Exchange desires to incentivize Market Makers to send order flow to ISE to meet their tier requirements. The Exchange believes that the proposed modifications to its ADV and Market Maker Plus tier calculations are pro-competitive and will result in lower total costs to end users, a positive outcome of competitive markets.

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

¹⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2017-93 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-2017-93. 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-2017-93 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

Eduardo A. Aleman
Assistant Secretary

¹⁹ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

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

**Nasdaq ISE, LLC
RULES**

* * *

PREFACE

Any day that the market 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 the ADV calculation; provided that the Exchange will only remove the day for members that would have a lower ADV with the day included.

All fee disputes concerning fees which are billed by the Exchange must be submitted to the Exchange in writing and must be accompanied by supporting documentation. All fee disputes must be submitted no later than sixty (60) calendar days after receipt of a billing invoice.

* * *

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	\$0.44	\$0.20	\$0.10	\$0.50	\$0.20	N/A
Non-Nasdaq ISE Market Maker (FarMM)	\$0.10	\$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)

* * *

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. Other than days where the Exchange closes early for holiday observance, any day that the market 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 the Market Maker Plus tier calculation; provided that the Exchange will only remove the day for members that would have a lower time at the NBBO for the specified series with the day included.

* * *

II. Complex Order Fees and Rebates⁽¹²⁾

* * *

- 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.]

* * *

- 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.]

* * *

IV. Other Options Fees and Rebates

* * *

E. Member Order Routing Program

* * *

- Rebate paid per originating contract side for all unsolicited Crossing Orders executed by an eligible EAM on their MORP designated sessions. The rebate for the highest tier achieved is applied retroactively to all eligible contracts traded in a given month. [For purposes of determining whether the member meets the above ADV thresholds, any day that the Exchange 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.]

* * *