

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * <input type="text" value="34"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input type="text" value="2018"/> - * <input type="text" value="27"/>	Amendment No. (req. for Amendments *) <input type="text"/>
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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 type="checkbox"/> 19b-4(f)(6)
			<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 *).

A proposal to amend the Exchange Schedule of Fees to modify the rebates it provides to Members that send unsolicited Crossing Orders to the Exchange.

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 * <input type="text" value="Brett"/>	Last Name * <input type="text" value="Kitt"/>
Title * <input type="text" value="Senior Associate General Counsel"/>	
E-mail * <input type="text" value="Brett.Kitt@nasdaq.com"/>	
Telephone * <input type="text" value="(301) 978-8132"/>	Fax <input type="text"/>

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 <input type="text" value="03/23/2018"/>	<input type="text" value="Executive Vice President and General Counsel"/>
By <input type="text" value="Edward S.Knight"/>	<input type="text" value="edward.knight@nasdaq.com"/>

(Name *)

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

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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

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

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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 proposal to amend the Exchange’s Schedule of Fees to modify the rebates it provides to Members that send unsolicited Crossing Orders³ to the Exchange.

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:

Brett Kitt
Senior Associate General Counsel
Nasdaq, Inc.
(301) 978-8132

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ A “Crossing Order” is an order executed in the Exchange’s Facilitation Mechanism, Solicited Order Mechanism, Price Improvement Mechanism (“PIM”) or submitted as a Qualified Contingent Cross (“QCC”) order. For purposes of this Fee Schedule, orders executed in the Block Order Mechanism are also considered Crossing Orders. See Preface to ISE’s Schedule of Fees.

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 ISE's Schedule of Fees to replace the current Member Order Routing Program ("MORP"), which provides enhanced rebates to order routing firms that select the Exchange as the default routing destination for unsolicited Crossing Orders, and the Customer to Customer Rebate PLUS program,⁴ which provides an indirect incentive for Members to direct unsolicited Crossing Orders to the Exchange, with a new rebate program, entitled the "PIM and Facilitation Rebate" program. Through this new program, the Exchange aims to provide a more accessible, direct, and effective incentive to Members to direct their unsolicited Crossing Orders to the Exchange.

MORP

As noted above, the MORP is a program that provides rebates to firms that select the Exchange as their default routing destination for unsolicited Crossing Orders. To be eligible to participate in MORP, an Electronic Access Member ("EAM") must: (1) designate to the Exchange, in writing, those sessions (connections to the Exchange over which the firm submits orders) that meet the following MORP criteria; (2) provide systems to its clients that enable the electronic routing of option orders to all of the U.S. options exchanges, including ISE; (3) interface with ISE to access the Exchange's electronic options trading platform; (4) offer to its clients a customized interface and routing functionality such that ISE will be the default destination for all unsolicited Crossing Orders entered by the EAM, provided that market conditions allow the Crossing

⁴ See Section IV, A of the Schedule of Fees.

Order to be executed on ISE; (5) configure its own option order routing functionality such that ISE will be the default destination for all unsolicited Crossing Orders, provided that market conditions allow the Crossing Order to be executed on ISE, with respect to all option orders as to which the EAM has routing discretion; and (6) ensure that the default routing functionality permits users submitting option orders through such system to manually override the ISE as the default destination on an order-by-order basis. EAMs that wish to participate in the program must certify that they meet the foregoing MORP requirements, in writing, on a monthly basis.

An EAM that is MORP-eligible currently receives a rebate for all unsolicited Crossing Orders of \$0.05 per originating contract side, provided that the Member executes a minimum average daily volume (“ADV”) in unsolicited Crossing Orders of at least 30,000 originating contract sides. This rebate increases to \$0.07 per originating contract side, provided that the Member executes a higher ADV in unsolicited Crossing Orders of 100,000 originating contract sides. The rebate for the highest tier achieved is applied retroactively to all eligible contracts traded in a given month.

In addition, any EAM that qualifies for the MORP rebate by executing an ADV of 30,000 originating contract sides or more is also eligible for increased Facilitation and Solicitation break-up rebates⁵ for their Non-ISE Market Maker,⁶ Firm

⁵ Break-up rebates are provided for contracts that are submitted to the Facilitation and Solicited Order Mechanisms that do not trade with their contra order except when those contracts trade against pre-existing orders and quotes on the Exchange’s orderbooks. The applicable fee for Crossing Orders is applied to any contracts for which a rebate is provided.

⁶ A “Non-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.

Proprietary,⁷ Broker-Dealer,⁸ Professional Customer,⁹ and Priority Customer orders.¹⁰

Currently, MORP eligible members that execute a qualifying ADV in unsolicited Crossing Orders of at least 30,000 originating contract sides, receive a Facilitation and Solicitation break-up rebate that is \$0.35 per contract for regular and complex orders in Select Symbols,¹¹ \$0.15 per contract for regular orders in Non-Select Symbols,¹² \$0.80 per contract for complex orders in Non-Select Symbols, and \$0.15 per contract for regular and complex orders in foreign exchange option classes.

The MORP program was designed to encourage order routing firms to execute additional unsolicited Crossing Order volume on the ISE. However, the Exchange has concluded that the MORP program has not fulfilled its intended purpose due, in large part, to the fact that the conditions for participation in the program have proven to be onerous. Accordingly, the Exchange proposes to eliminate the MORP program and, as

⁷ A “Firm Proprietary” order is an order submitted by a member for its own proprietary account.

⁸ A “Broker-Dealer” order is an order submitted by a member for a broker-dealer account that is not its own proprietary account.

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

¹⁰ 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 ISE Rule 100(a)(37A).

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

¹² “Non-Select Symbols” are options overlying all symbols excluding Select Symbols.

discussed below, the Exchange proposes to replace it with the proposed PIM and Facilitation Rebate program, described below.

Customer to Customer Rebate PLUS

As part of the QCC and Solicitation Rebate program, the Exchange presently offers a set of rebates called “Customer to Customer” Rebate PLUS.¹³ These rebates apply to “Customer to Customer” Orders¹⁴ and in particular, those executed by two Priority Customers with: (1) a specified volume of QCC¹⁵ and other solicited Crossing Orders in a given month; and (2) 175,000 or more unsolicited originating Facilitation¹⁶ contract sides per month. Once a Member meets the volume thresholds described above, the Member receives \$0.05 per contract “Customer to Customer” Rebate PLUS for each originating contract side of their “Customer to Customer” Orders.

As a means of consolidating its incentive programs relating to unsolicited Crossing orders, and to provide more direct incentives to encourage such orders, the Exchange proposes to eliminate the Customer to Customer Rebate PLUS program and replace it with the proposed PIM and Facilitation Rebate, described below.

¹³ See Section IV, A of the Schedule of Fees.

¹⁴ A “Customer to Customer” order is a QCC or other solicited order between two Priority Customers.

¹⁵ A QCC Order is comprised of an originating order to buy or sell at least 1000 contracts that is identified as being part of a qualified contingent trade, as that term is defined in Supplementary Material .01 below, coupled with a contra-side order or orders totaling an equal number of contracts. See ISE Rule 715(j).

¹⁶ The Facilitation Mechanism is a process by which an EAM can execute a transaction wherein the EAM seeks to facilitate a block-size order it represents as agent, and/or a transaction wherein the EAM solicited interest to execute against a block-size order it represents as agent. See Rule 716(d).

PIM and Facilitation Rebate

In lieu of the MORP and the Customer to Customer Rebate PLUS program, the Exchange proposes to incentivize the flow of unsolicited Crossing Orders to the Exchange by establishing a PIM and Facilitation Rebate program. This proposed program would offer rebates to Members that use the Facilitation Mechanism or PIM for unsolicited Crossing Orders whereby the contra-side of those orders: (1) is either Firm Proprietary or Broker-Dealer; and (2) has total affiliated ADV¹⁷ of 250,000 or more contracts. Members whose orders meet these conditions will be entitled to receive a rebate of \$0.02 per originating contract for up to 199,999 originating contract sides in a month. To the extent that Members have at least 200,000 originating contract sides in a given month, then the Members will be entitled to receive a rebate of \$0.03 for all of its originating contract sides in that month that qualify for the PIM and Facilitation Rebate Program during that month, including the Members' first qualifying 199,999 originating contract sides.

To the extent that Members qualify for the foregoing rebate, they may also become eligible for two additional rebates on the originating contract sides of their unsolicited Crossing Orders. First, if Members separately achieve, on a cumulative basis, more than 1,000,000 QCC and Solicitation Order Mechanism¹⁸ originating contracts sides in a month, then they will earn an additional \$0.01 rebate per originating contract

¹⁷ Eligible volume from affiliated Members will be aggregated in determining total affiliated ADV, provided there is at least 75% common ownership between the Members as reflected on each Member's Form BD, Schedule A.

¹⁸ The Solicited Order Mechanism is a process by which an EAM can attempt to execute orders of 500 or more contracts it represents as agent against contra orders that it solicited. Each order entered into the Solicited Order Mechanism shall be designated as all-or-none. See ISE Rule 716(e).

side. Second, if Members achieve Priority Customer Complex ADV of between 100,000-224,999 contracts, then they will earn an additional \$0.01 rebate per originating contract side on their unsolicited Crossing Orders that qualify for the PIM and Facilitation Rebate program. This second additional rebate will be \$0.02 to the extent that Members achieve Priority Customer Complex ADV Orders of 225,000 contracts or more. For avoidance of doubt, if a Member has 200,000 originating contract sides in a month that qualify for a \$0.03 rebate under the PIM and Facilitation Rebate program and the Member also achieves Priority Customer Complex Order ADV of 225,000 contracts in that same month, then the Member will receive an additional \$0.02 rebate on all of its 200,000 originating contract sides that qualify for the PIM and Facilitation Rebate program, for a total rebate on such originating contract sides of \$0.05. These two additional rebate opportunities will be cumulative, meaning that a Member can qualify for both of them and receive an additional rebate of up to \$0.03 per originating contract side.

The combination of the base rebate and the additional rebates will offer Members that use the Facilitation Mechanism or PIM for unsolicited Crossing Orders an opportunity to receive as much as \$0.06 in rebates per originating contract side.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁹ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,²⁰ in particular, in that it provides for the equitable allocation of reasonable dues, fees, and

¹⁹ 15 U.S.C. 78f(b).

²⁰ 15 U.S.C. 78f(b)(4) and (5).

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 Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”²¹

Likewise, in NetCoalition v. Securities and Exchange Commission²² (“NetCoalition”) the D.C. Circuit upheld the Commission’s use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.²³ As the court emphasized, the Commission “intended in Regulation NMS that ‘market forces, rather than regulatory requirements’ play a role in determining the market data . . . to be made available to investors and at what cost.”²⁴

Further, “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of

²¹ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

²² NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

²³ See NetCoalition, at 534 - 535.

²⁴ Id. at 537.

where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’”²⁵ Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

The Exchange believes that its proposal to eliminate the MORP is reasonable because the MORP has proven to be ineffective in achieving its aim of attracting additional unsolicited Crossing Order flow to the Exchange. The conditions for participation in the MORP have proven to be too onerous for Members. Furthermore, the Exchange has limited resources available to it to devote to the operation of special pricing programs and as such, it is equitable to allocate those resources to those programs that are effective and away from those programs that are ineffective. The proposal to eliminate the MORP is not unfairly discriminatory because the proposal will apply uniformly to all similarly situated Members.

The Exchange’s proposal to eliminate the Customer to Customer Rebate PLUS program is also both reasonable and equitable because this program provides only an indirect incentive to Members to send unsolicited Crossing Orders to the Exchange and the Exchange prefers to re-allocate its limited resources to the provision of a stronger and more direct incentive. The proposal to eliminate the Customer to Customer Rebate PLUS program is not unfairly discriminatory because the proposal will apply uniformly to all similarly situated Members.

²⁵ Id. at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

The Exchange's proposal to replace the MORP and the Customer to Customer Rebate PLUS program with the PIM and Facilitation Rebate program is also reasonable and equitable. The Exchange expects the PIM and Facilitation program will complement its QCC and Solicitation Rebate program for solicited Crossing Orders and it will provide a more easily accessible, direct, and effective incentive for Members to send their unsolicited Crossing Orders to the Exchange. In particular, the proposal will encourage Members to send unsolicited PIM and Facilitation orders to the Exchange and to meet the 200,000 contract threshold to obtain the higher \$0.03 base rebate.²⁶ The Exchange also believes that it reasonable and equitable to provide an additional rebate as a reward to Members that achieve high levels of QCC and Solicitation activity in addition to Facilitation and PIM activity. It is also reasonable and equitable for the Exchange to provide additional rebates to Members that achieve high volumes of Priority Customer complex activity as a means of incentivizing increased use of the Exchange's Complex Order Book. The Exchange expects that this package of rebates will be attractive to market participants.

Finally, the Exchange believes that the proposed rebates for unsolicited Crossing Orders in the PIM and Facilitation Mechanism are not unfairly discriminatory. Although the proposal is focused on incentives for unsolicited Crossing Orders, it replaces existing Exchange rebate programs with a similar aim. In any event, the Exchange already maintains a robust QCC and Solicitation Rebate program of incentives for members that submit solicited Crossing Orders to the QCC or the Solicitation, Facilitation, or Price

²⁶ The Exchange believes it is reasonable to determine rebates with reference to "total affiliated ADV" because it applies the same concept elsewhere, including in calculating its QCC and Solicitation Rebate program rebates.

Improvement Mechanisms. Furthermore, the Exchange's decision to limit program eligibility to those unsolicited Crossing Orders that involve Firm Proprietary or Broker Dealer contra-side parties is not unfairly discriminatory because the Exchange wishes to encourage the direct submission by Members of Crossing Orders to the Exchange, and as a matter of practice, Firm Proprietary and Broker-Dealer orders are most likely to directly submitted by Members as these participant types typically utilize the crossing fee cap on ISE and have increased incentive to pre-pay for their Crossing Orders. Finally, the Exchange will apply the proposed rebates uniformly to all Members' orders that meet the required volume thresholds.

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 changes to the Exchange's rebate programs are intended to attract additional order flow to ISE. The Exchange believes that the proposal will enhance the competitiveness of the ISE relative to other options exchanges.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that

the degree to which fee changes in this market may impose any burden on competition is extremely limited.

In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of Members or competing order execution venues to maintain their competitive standing in the financial markets.

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,²⁷ 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

²⁷ 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-2018-27)

March __, 2018

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify the Rebates it provides to Members that Send Unsolicited Crossing Orders to the Exchange

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹, and Rule 19b-4 thereunder,² notice is hereby given that on March 23, 2018, 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 Schedule of Fees to modify the rebates it provides to Members that send unsolicited Crossing Orders³ to the Exchange.

The text of the proposed rule change is available on the Exchange’s Website at <http://ise.cchwallstreet.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.

³ A “Crossing Order” is an order executed in the Exchange’s Facilitation Mechanism, Solicited Order Mechanism, Price Improvement Mechanism (“PIM”) or submitted as a Qualified Contingent Cross (“QCC”) order. For purposes of this Fee Schedule, orders executed in the Block Order Mechanism are also considered Crossing Orders. See Preface to ISE’s Schedule of Fees.

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 ISE's Schedule of Fees to replace the current Member Order Routing Program ("MORP"), which provides enhanced rebates to order routing firms that select the Exchange as the default routing destination for unsolicited Crossing Orders, and the Customer to Customer Rebate PLUS program,⁴ which provides an indirect incentive for Members to direct unsolicited Crossing Orders to the Exchange, with a new rebate program, entitled the "PIM and Facilitation Rebate" program. Through this new program, the Exchange aims to provide a more accessible, direct, and effective incentive to Members to direct their unsolicited Crossing Orders to the Exchange.

MORP

As noted above, the MORP is a program that provides rebates to firms that select the Exchange as their default routing destination for unsolicited Crossing Orders. To be eligible to participate in MORP, an Electronic Access Member ("EAM") must: (1)

⁴ See Section IV, A of the Schedule of Fees.

designate to the Exchange, in writing, those sessions (connections to the Exchange over which the firm submits orders) that meet the following MORP criteria; (2) provide systems to its clients that enable the electronic routing of option orders to all of the U.S. options exchanges, including ISE; (3) interface with ISE to access the Exchange's electronic options trading platform; (4) offer to its clients a customized interface and routing functionality such that ISE will be the default destination for all unsolicited Crossing Orders entered by the EAM, provided that market conditions allow the Crossing Order to be executed on ISE; (5) configure its own option order routing functionality such that ISE will be the default destination for all unsolicited Crossing Orders, provided that market conditions allow the Crossing Order to be executed on ISE, with respect to all option orders as to which the EAM has routing discretion; and (6) ensure that the default routing functionality permits users submitting option orders through such system to manually override the ISE as the default destination on an order-by-order basis. EAMs that wish to participate in the program must certify that they meet the foregoing MORP requirements, in writing, on a monthly basis.

An EAM that is MORP-eligible currently receives a rebate for all unsolicited Crossing Orders of \$0.05 per originating contract side, provided that the Member executes a minimum average daily volume ("ADV") in unsolicited Crossing Orders of at least 30,000 originating contract sides. This rebate increases to \$0.07 per originating contract side, provided that the Member executes a higher ADV in unsolicited Crossing Orders of 100,000 originating contract sides. The rebate for the highest tier achieved is applied retroactively to all eligible contracts traded in a given month.

In addition, any EAM that qualifies for the MORP rebate by executing an ADV of 30,000 originating contract sides or more is also eligible for increased Facilitation and Solicitation break-up rebates⁵ for their Non-ISE Market Maker,⁶ Firm Proprietary,⁷ Broker-Dealer,⁸ Professional Customer,⁹ and Priority Customer orders.¹⁰ Currently, MORP eligible members that execute a qualifying ADV in unsolicited Crossing Orders of at least 30,000 originating contract sides, receive a Facilitation and Solicitation break-up rebate that is \$0.35 per contract for regular and complex orders in Select Symbols,¹¹ \$0.15 per contract for regular orders in Non-Select Symbols,¹² \$0.80

⁵ Break-up rebates are provided for contracts that are submitted to the Facilitation and Solicited Order Mechanisms that do not trade with their contra order except when those contracts trade against pre-existing orders and quotes on the Exchange's orderbooks. The applicable fee for Crossing Orders is applied to any contracts for which a rebate is provided.

⁶ A "Non-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.

⁷ A "Firm Proprietary" order is an order submitted by a member for its own proprietary account.

⁸ A "Broker-Dealer" order is an order submitted by a member for a broker-dealer account that is not its own proprietary account.

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

¹⁰ 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 ISE Rule 100(a)(37A).

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

¹² "Non-Select Symbols" are options overlying all symbols excluding Select Symbols.

per contract for complex orders in Non-Select Symbols, and \$0.15 per contract for regular and complex orders in foreign exchange option classes.

The MORP program was designed to encourage order routing firms to execute additional unsolicited Crossing Order volume on the ISE. However, the Exchange has concluded that the MORP program has not fulfilled its intended purpose due, in large part, to the fact that the conditions for participation in the program have proven to be onerous. Accordingly, the Exchange proposes to eliminate the MORP program and, as discussed below, the Exchange proposes to replace it with the proposed PIM and Facilitation Rebate program, described below.

Customer to Customer Rebate PLUS

As part of the QCC and Solicitation Rebate program, the Exchange presently offers a set of rebates called “Customer to Customer” Rebate PLUS.¹³ These rebates apply to “Customer to Customer” Orders¹⁴ and in particular, those executed by two Priority Customers with: (1) a specified volume of QCC¹⁵ and other solicited Crossing Orders in a given month; and (2) 175,000 or more unsolicited originating Facilitation¹⁶ contract sides per month. Once a Member meets the volume thresholds described above,

¹³ See Section IV, A of the Schedule of Fees.

¹⁴ A “Customer to Customer” order is a QCC or other solicited order between two Priority Customers.

¹⁵ A QCC Order is comprised of an originating order to buy or sell at least 1000 contracts that is identified as being part of a qualified contingent trade, as that term is defined in Supplementary Material .01 below, coupled with a contra-side order or orders totaling an equal number of contracts. See ISE Rule 715(j).

¹⁶ The Facilitation Mechanism is a process by which an EAM can execute a transaction wherein the EAM seeks to facilitate a block-size order it represents as agent, and/or a transaction wherein the EAM solicited interest to execute against a block-size order it represents as agent. See Rule 716(d).

the Member receives \$0.05 per contract “Customer to Customer” Rebate PLUS for each originating contract side of their “Customer to Customer” Orders.

As a means of consolidating its incentive programs relating to unsolicited Crossing orders, and to provide more direct incentives to encourage such orders, the Exchange proposes to eliminate the Customer to Customer Rebate PLUS program and replace it with the proposed PIM and Facilitation Rebate, described below.

PIM and Facilitation Rebate

In lieu of the MORP and the Customer to Customer Rebate PLUS program, the Exchange proposes to incentivize the flow of unsolicited Crossing Orders to the Exchange by establishing a PIM and Facilitation Rebate program. This proposed program would offer rebates to Members that use the Facilitation Mechanism or PIM for unsolicited Crossing Orders whereby the contra-side of those orders: (1) is either Firm Proprietary or Broker-Dealer; and (2) has total affiliated ADV¹⁷ of 250,000 or more contracts. Members whose orders meet these conditions will be entitled to receive a rebate of \$0.02 per originating contract for up to 199,999 originating contract sides in a month. To the extent that Members have at least 200,000 originating contract sides in a given month, then the Members will be entitled to receive a rebate of \$0.03 for all of its originating contract sides in that month that qualify for the PIM and Facilitation Rebate Program during that month, including the Members’ first qualifying 199,999 originating contract sides.

¹⁷ Eligible volume from affiliated Members will be aggregated in determining total affiliated ADV, provided there is at least 75% common ownership between the Members as reflected on each Member’s Form BD, Schedule A.

To the extent that Members qualify for the foregoing rebate, they may also become eligible for two additional rebates on the originating contract sides of their unsolicited Crossing Orders. First, if Members separately achieve, on a cumulative basis, more than 1,000,000 QCC and Solicitation Order Mechanism¹⁸ originating contracts sides in a month, then they will earn an additional \$0.01 rebate per originating contract side. Second, if Members achieve Priority Customer Complex ADV of between 100,000-224,999 contracts, then they will earn an additional \$0.01 rebate per originating contract side on their unsolicited Crossing Orders that qualify for the PIM and Facilitation Rebate program. This second additional rebate will be \$0.02 to the extent that Members achieve Priority Customer Complex ADV Orders of 225,000 contracts or more. For avoidance of doubt, if a Member has 200,000 originating contract sides in a month that qualify for a \$0.03 rebate under the PIM and Facilitation Rebate program and the Member also achieves Priority Customer Complex Order ADV of 225,000 contracts in that same month, then the Member will receive an additional \$0.02 rebate on all of its 200,000 originating contract sides that qualify for the PIM and Facilitation Rebate program, for a total rebate on such originating contract sides of \$0.05. These two additional rebate opportunities will be cumulative, meaning that a Member can qualify for both of them and receive an additional rebate of up to \$0.03 per originating contract side.

¹⁸ The Solicited Order Mechanism is a process by which an EAM can attempt to execute orders of 500 or more contracts it represents as agent against contra orders that it solicited. Each order entered into the Solicited Order Mechanism shall be designated as all-or-none. See ISE Rule 716(e).

The combination of the base rebate and the additional rebates will offer Members that use the Facilitation Mechanism or PIM for unsolicited Crossing Orders an opportunity to receive as much as \$0.06 in rebates per originating contract side.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁹ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,²⁰ 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 Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”²¹

Likewise, in NetCoalition v. Securities and Exchange Commission²² (“NetCoalition”) the D.C. Circuit upheld the Commission’s use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that

¹⁹ 15 U.S.C. 78f(b).

²⁰ 15 U.S.C. 78f(b)(4) and (5).

²¹ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

²² NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

Congress mandated a cost-based approach.²³ As the court emphasized, the Commission “intended in Regulation NMS that ‘market forces, rather than regulatory requirements’ play a role in determining the market data . . . to be made available to investors and at what cost.”²⁴

Further, “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’ . . .”²⁵ Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

The Exchange believes that its proposal to eliminate the MORP is reasonable because the MORP has proven to be ineffective in achieving its aim of attracting additional unsolicited Crossing Order flow to the Exchange. The conditions for participation in the MORP have proven to be too onerous for Members. Furthermore, the Exchange has limited resources available to it to devote to the operation of special pricing programs and as such, it is equitable to allocate those resources to those programs that are effective and away from those programs that are ineffective. The proposal to eliminate

²³ See NetCoalition, at 534 - 535.

²⁴ Id. at 537.

²⁵ Id. at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

the MORP is not unfairly discriminatory because the proposal will apply uniformly to all similarly situated Members.

The Exchange's proposal to eliminate the Customer to Customer Rebate PLUS program is also both reasonable and equitable because this program provides only an indirect incentive to Members to send unsolicited Crossing Orders to the Exchange and the Exchange prefers to re-allocate its limited resources to the provision of a stronger and more direct incentive. The proposal to eliminate the Customer to Customer Rebate PLUS program is not unfairly discriminatory because the proposal will apply uniformly to all similarly situated Members.

The Exchange's proposal to replace the MORP and the Customer to Customer Rebate PLUS program with the PIM and Facilitation Rebate program is also reasonable and equitable. The Exchange expects the PIM and Facilitation program will complement its QCC and Solicitation Rebate program for solicited Crossing Orders and it will provide a more easily accessible, direct, and effective incentive for Members to send their unsolicited Crossing Orders to the Exchange. In particular, the proposal will encourage Members to send unsolicited PIM and Facilitation orders to the Exchange and to meet the 200,000 contract threshold to obtain the higher \$0.03 base rebate.²⁶ The Exchange also believes that it reasonable and equitable to provide an additional rebate as a reward to Members that achieve high levels of QCC and Solicitation activity in addition to Facilitation and PIM activity. It is also reasonable and equitable for the Exchange to provide additional rebates to Members that achieve high volumes of Priority Customer

²⁶ The Exchange believes it is reasonable to determine rebates with reference to "total affiliated ADV" because it applies the same concept elsewhere, including in calculating its QCC and Solicitation Rebate program rebates.

complex activity as a means of incentivizing increased use of the Exchange's Complex Order Book. The Exchange expects that this package of rebates will be attractive to market participants.

Finally, the Exchange believes that the proposed rebates for unsolicited Crossing Orders in the PIM and Facilitation Mechanism are not unfairly discriminatory. Although the proposal is focused on incentives for unsolicited Crossing Orders, it replaces existing Exchange rebate programs with a similar aim. In any event, the Exchange already maintains a robust QCC and Solicitation Rebate program of incentives for members that submit solicited Crossing Orders to the QCC or the Solicitation, Facilitation, or Price Improvement Mechanisms. Furthermore, the Exchange's decision to limit program eligibility to those unsolicited Crossing Orders that involve Firm Proprietary or Broker Dealer contra-side parties is not unfairly discriminatory because the Exchange wishes to encourage the direct submission by Members of Crossing Orders to the Exchange, and as a matter of practice, Firm Proprietary and Broker-Dealer orders are most likely to directly submitted by Members as these participant types typically utilize the crossing fee cap on ISE and have increased incentive to pre-pay for their Crossing Orders. Finally, the Exchange will apply the proposed rebates uniformly to all Members' orders that meet the required volume thresholds.

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 changes to the Exchange's rebate programs are intended to attract additional order flow to ISE. The Exchange believes that the proposal will enhance the competitiveness of the ISE relative to other options exchanges.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of Members or competing order execution venues to maintain their competitive standing in the financial markets.

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.²⁷ 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-2018-27 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-2018-27. This file number should be included on the subject line if e-mail is used. To help the Commission process

²⁷ 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-2018-27 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.²⁸

Eduardo A. Aleman
Assistant Secretary

²⁸ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

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

Nasdaq ISE Schedule of Fees

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IV. Other Options Fees and Rebates

A. QCC and Solicitation Rebate

» Members using the Qualified Contingent Cross (QCC) and/or other solicited crossing orders, including solicited orders executed in the Solicitation, Facilitation or Price Improvement Mechanisms, will receive rebates according to the table below for each originating contract side in all symbols traded on the Exchange. Once a Member reaches a certain volume threshold in QCC orders and/or solicited crossing orders during a month, the Exchange will provide rebates to that Member for all of its QCC and solicited crossing order traded contracts for that month. All eligible volume from affiliated Members will be aggregated in determining QCC and Solicitation volume totals, provided there is at least 75% common ownership between the Members as reflected on each Member's Form BD, Schedule A. The applicable rebates will be applied on QCC and solicited crossing order traded contracts once the volume threshold is met. Members will receive the Non-"Customer to Customer" rebate for all QCC and/or other solicited crossing orders except for QCC and solicited orders between two Priority Customers. QCC and solicited orders between two Priority Customers will receive the "Customer to Customer" rebate [or "Customer to Customer" Rebate PLUS, respectively]. The volume threshold and corresponding rebates are as follows:

» Non-"Customer to Customer" and "Customer to Customer" volume will be aggregated in determining the applicable volume tier.

Originating Contract Sides	Non-"Customer to Customer" Rebate	"Customer to Customer" Rebate	["Customer to Customer" Rebate PLUS*]
0 to 99,999	\$0.00	\$0.00	[\$0.00]
100,000 to 199,999	(\$0.05)	(\$0.01)	[\$0.05]
200,000 to 499,999	(\$0.07)	(\$0.01)	[\$0.05]
500,000 to 999,999	(\$0.09)	(\$0.03)	[\$0.05]

1,000,000+ (\$0.11) (\$0.03) [(\$0.05)]

^l* PLUS rebate is for Members with total monthly unsolicited originating Facilitation contract side volume of 175,000 or more.]

B. PIM and Facilitation Rebate

» Members using the Facilitation Mechanism or Price Improvement Mechanism (“PIM”) for unsolicited Crossing Orders, whereby the contra-side party of the Crossing Order (1) is either Firm Proprietary or Broker-Dealer and (2) has total affiliated Average Daily Volume (“ADV”) of 250,000 or more contracts, are eligible to earn the following rebates during a given month. In determining total affiliated ADV, eligible volume from affiliated Members will be aggregated, provided there is at least 75% common ownership between the Members as reflected on each Member’s Form BD, Schedule A.

<u>Originating Contract Sides</u>	<u>Rebate</u>
<u>0 to 199,999</u>	<u>(\$0.02)</u>
<u>200,000 or more</u>	<u>(\$0.03)*</u>

*Once a Member reaches or exceeds the volume threshold to qualify for a \$0.03 per originating contract side rebate during a given month, then the Member will receive the \$0.03 rebate for all of its originating contract sides that qualify for the PIM and Facilitation Rebate during that month, including for the Member’s first qualifying 0-199,999 originating contract sides.

Members that qualify for the PIM and Facilitation rebates on their unsolicited Crossing Orders, as set forth in the above paragraph, may also earn either or both of the following additional rebates:

1. Members that achieve combined Qualified Contingent Cross (“QCC”) and Solicitation Originating Contracts Sides of more than 1,000,000 during a given month can earn an additional rebate of (\$0.01) per originating contract side on their unsolicited Crossing Orders that qualify for the PIM and Facilitation Rebate program.
2. Members that achieve Priority Customer Complex Order ADV of between 100,000-224,999 contracts can earn an additional rebate of (\$0.01) per originating contract side on all of their unsolicited Crossing Orders that qualify for the PIM and Facilitation Rebate program; however, this additional rebate will be (\$0.02) per originating contract on all unsolicited Crossing Orders that qualify for the PIM and Facilitation Rebate Program to the extent that Members achieve Priority Customer Complex Order ADV of 225,000 or more contracts. For avoidance of doubt, if a Member has 200,000 originating contract sides in a month that qualify

for a \$0.03 rebate under the PIM and Facilitation Rebate program and the Member also achieves Priority Customer Complex Order ADV of 225,000 contracts in that same month, then the Member will receive an additional \$0.02 rebate on all of its 200,000 originating contract sides that qualify for the PIM and Facilitation Rebate program, for a total rebate on such originating contract sides of \$0.05.

C[B]. Non-Priority Customer License Surcharge for Index Options

Symbols	Fee
BKX	\$0.10
NDX	\$0.25

» The Non-Priority Customer License Surcharge applies to all executions in BKX and NDX, including executions of BKX and NDX orders that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan.

D[C]. Nasdaq ISE Market Maker Discount Tiers

No change.

E[D]. Marketing Fee

No change.

[E. Member Order Routing Program

Monthly ADV in Unsolicited Crossing Orders for MORP Designated Sessions (originating contract sides)	Rebate
30,000-99,999	(\$0.05)
100,000+	(\$0.07)

» A Member may designate one or more sessions to be eligible for the Member Order Routing Program ("MORP"). A session is connection to the exchange over which a member submits orders. See Section V.C. of this Schedule of Fees. If a session is designated as eligible for MORP all requirements for the program must be met for that session.

- » 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.
- » NDX shall be excluded from the monthly ADV when calculating originating contract side for unsolicited Crossing Orders executed by an eligible EAM on their MORP designated sessions. NDX shall not be subject to unsolicited Crossing Orders rebates and Facilitation and Solicitation break-up rebates.

» To be eligible to participate in the Member Order Routing Program an EAM must:

1. Designate, in writing, to the Exchange which sessions are MORP eligible according to the criteria below;
2. Provide to its clients, systems that enable the electronic routing of option orders to all of the U.S. options exchanges, including Nasdaq ISE;
3. Interface with Nasdaq ISE to access the Exchange's electronic options trading platform;
4. Offer to its clients a customized interface and routing functionality such that Nasdaq ISE will be the default destination for all unsolicited Crossing Orders entered by the EAM, provided that market conditions allow the Crossing Order to be executed on Nasdaq ISE;
5. Configure its own option order routing functionality such that Nasdaq ISE will be the default destination for all unsolicited Crossing Orders, provided that market conditions allow the Crossing Order to be executed on Nasdaq ISE, with respect to all option orders as to which the EAM has routing discretion; and
6. Ensure that the default routing functionality permits users submitting option orders through such system to manually override the Nasdaq ISE as the default destination on an order-by-order basis.

» Facilitation and Solicitation Break-Up Rebates:

Market Participant	Regular Orders in Select Symbols	Complex Orders in Select Symbols	Regular Orders in Non-Select Symbols	Complex Orders in Non-Select Symbols	Regular Orders in FX Options	Complex Orders in FX Options
Market Maker	N/A	N/A	N/A	N/A	N/A	N/A
Non-Nasdaq ISE Market Maker (FarMM)	(\$0.35)	(\$0.35)	(\$0.15)	(\$0.80)	(\$0.15)	(\$0.15)

Firm Proprietary / Broker-Dealer	(\$0.35)	(\$0.35)	(\$0.15)	(\$0.80)	(\$0.15)	(\$0.15)
Professional Customer	(\$0.35)	(\$0.35)	(\$0.15)	(\$0.80)	(\$0.15)	(\$0.15)
Priority Customer	(\$0.35)	(\$0.35)	(\$0.15)	(\$0.80)	(\$0.15)	(\$0.15)

» Eligible MORP EAMS that execute a monthly ADV in unsolicited Crossing Orders of 30,000 originating contract sides or more on their MORP designated sessions are also eligible for increased Facilitation and Solicitation break-up rebates. Break-up rebates shown in the table above apply instead of rebates described in Sections I, II, and III, and will be provided for contracts that are submitted to the Facilitation and Solicited Order Mechanisms that do not trade with their contra order except when those contracts trade against pre-existing orders and quotes on the Exchange's orderbooks. The applicable fee for Crossing Orders is applied to any contracts for which a rebate is provided.]

F. – K. No change.

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