

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 45	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4		File No.* SR - 2018 - * 61	Amendment No. (req. for Amendments *)
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"/>			
<b>Description</b>				
Provide a brief description of the action (limit 250 characters, required when Initial is checked *).				
<input type="text" value="A proposal to amend the Exchange Schedule of Fees."/>				
<b>Contact Information</b>				
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="Sun"/>	Last Name *	<input type="text" value="Kim"/>	
Title *	<input type="text" value="Associate General Counsel"/>			
E-mail *	<input type="text" value="Sun.Kim@nasdaq.com"/>			
Telephone *	<input type="text" value="(212) 231-5106"/>	Fax	<input type="text"/>	
<b>Signature</b>				
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="07/02/2018"/>	<input type="text" value="Executive Vice President and General Counsel"/>		
By	<input type="text" value="Edward S. Knight"/>	<input type="text"/>		
(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.				
<input type="button" value="edward.knight@nasdaq.com"/>				

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 \***

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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 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**

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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”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to amend the Exchange’s Schedule of Fees, as further described below.

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:

Sun Kim  
Associate General Counsel  
Nasdaq, Inc.  
212-231-5106

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 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 Exchange recently received approval to list index options on the Nasdaq 100 Reduced Value Index ("NQX") on a pilot basis.<sup>3</sup> The Exchange began to list NQX on June 26, 2018, and filed on the same day a proposed rule change that waived fees and rebates for executions in NQX options from June 26 - 29, 2018.<sup>4</sup> The Exchange now proposes to amend its Schedule of Fees to adopt pricing for NQX.

By way of background, certain proprietary products such as NDX and NDXP are commonly included in or excluded from a variety of fee and rebate programs. The Exchange notes that the reason these products are often included in or excluded from certain programs is because the Exchange has expended considerable resources developing and maintaining its proprietary products. Similar to NDX and NDXP, NQX is a proprietary product. As such, the Exchange proposes to establish transaction fees for NQX options that are similarly structured to the transaction fees for NDX and NDXP options with some differences as noted below. The Exchange also proposes to similarly include or exclude NQX options from several programs from which NDX and NDXP options are currently included or excluded. Lastly, the Exchange proposes a number of clarifying changes to the Schedule of Fees. Each change is discussed below.

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<sup>3</sup> See Securities Exchange Act Release No. 82911 (March 20, 2018), 83 FR 12966 (March 26, 2018) (SR-ISE-2017-106). The NQX options contract is the same in all respects as the current Nasdaq-100 Index options contract ("NDX") listed on the Exchange, except that NQX is P.M. settled and based on 1/5 of the value of the Nasdaq 100 Index. The Exchange notes that similar features are available with other index options contracts listed on the Exchange, including P.M. settled options on the full value of the Nasdaq 100 Index ("NDXP").

<sup>4</sup> See SR-ISE-2018-58 (not yet published).

Transaction Fees for NQX Options

The Exchange proposes to establish transaction fees and rebates for adding or removing liquidity from ISE (i.e., maker/taker fees and rebates) in NQX options. The proposed maker/taker fees and rebates for NQX will apply to executions in both the regular and complex order book, according to the following schedule:

<b>Market Participant</b>	<b>Maker Fee / Rebate</b>	<b>Taker Fee / Rebate</b>
Market Maker	(\$0.25)	\$0.00
Market Maker (for orders sent by Electronic Access Members)	(\$0.25)	\$0.00
Non-Nasdaq ISE Market Maker (FarMM)	\$0.25	\$0.25
Firm Proprietary / Broker-Dealer	\$0.25	\$0.25
Professional Customer	\$0.25	\$0.25
Priority Customer	\$0.00	\$0.00

The proposed pricing for NQX is similarly structured to how the Exchange currently prices its other proprietary products, NDX and NDXP, in that Non-Priority Customers,<sup>5</sup> except for Market Makers (i.e., Primary Market Makers and Competitive Market Makers) in this case, will be charged uniform transaction fees and Priority Customers<sup>6</sup> will not be charged any fees.<sup>7</sup> Furthermore, the proposed pricing for NQX

<sup>5</sup> “Non-Priority Customers” include Market Makers, Non-Nasdaq ISE Market Makers, Firm Proprietary / Broker-Dealers, and Professional Customers.

<sup>6</sup> A "Priority Customer" is a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s), as defined in Nasdaq ISE Rule 100(a)(37A).

<sup>7</sup> See Securities Exchange Act Releases No. 80637 (May 10, 2017), 82 FR 22576 (May 16, 2017) (SR-ISE-2017-35) (among other changes, establishing flat transaction fees for executions of regular NDX orders) and No. 83144 (May 1, 2018), 83 FR 20107 (May 7, 2018) (SR-ISE-2018-38) (among other changes, establishing flat transaction fees for executions of regular NDXP orders).

will similarly apply to all executions in NQX, including Non-Priority Customer Crossing Orders<sup>8</sup> in NQX. Unlike NDX and NDXP, which are currently charged the applicable complex order fees for Non-Select Symbols (i.e., options overlying all symbols that are not in the Penny Program) in Section II, the proposed pricing for NQX applies to both regular and complex executions in NQX orders. The Exchange believes that this will promote trading activity in the new product since complex executions in Non-Priority Customer NQX orders will mainly be charged at a lower rate.<sup>9</sup>

The proposed pricing for Market Maker orders, including those orders sent by Electronic Access Members (“EAMs”), is intended to encourage Market Maker activity in NQX, and the Exchange believes that the \$0.25 per contract maker rebate and taker fee waiver for Market Maker orders will provide such incentive. In addition, the proposed \$0.25 per contract maker rebate is intended to offset the proposed NQX license surcharge, as further discussed below, and will further incentivize Market Makers to provide liquidity in the new product during the initial months of trading.

In connection the foregoing changes, the Exchange proposes to remove language related to the NQX fee holiday from June 26 - 30, 2018 from its Schedule of Fees. The Exchange also proposes to relocate the pricing for NDX and NDXP presently set forth in the separate table entitled “Index Options” within Section I, and the Non-Priority

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<sup>8</sup> 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 order. For purposes of the fee schedule, orders executed in the Block Order Mechanism are also considered Crossing Orders.

<sup>9</sup> For instance, a Non-Priority Customer complex order in a Non-Select Symbol (when trading against a Priority Customer) would normally be charged maker/taker fees ranging from \$0.86 to \$0.88 per contract. See Maker and Taker fee schedule in Section II. NQX is a Non-Select Symbol.

Customer license surcharge for index options presently within Section IV.C, to group them with the proposed fees and rebates for NQX. The Exchange proposes to set forth the foregoing index options fees in Section III, which currently contains pricing for FX options, and retitle that section as “Index Options Fees and Rebates.” FX options ceased trading on the Exchange upon the January 2018 expiry, after which the Exchange determined not to list additional expiry contracts for FX options. No market participant has traded FX options on the Exchange as of the January 2018 expiry. As such, the Exchange proposes to remove all references to specific pricing for FX options from its Schedule of Fees.

The Exchange proposes in the new Section III to restructure the index options fees described above into three separate subsections. First, the Exchange proposes to add a new subsection A, and list the transaction fees for NDX and NDXP in this subsection. As noted above, the fees are not being amended; rather, the existing fees in Section I are being relocated into Section III.A. The rule text in corresponding note 7 in Section I will be deleted since the substance is being relocated to Section III.A. Section III.A will be titled, “NDX Index Options Fees for Regular Orders” to clarify that these fees apply to executions in regular NDX and NDXP orders only, and the Exchange will separately note in Section III.A that for all executions in complex NDX and NDXP orders, the applicable complex order fees for Non-Select Symbols in Section II will apply.<sup>10</sup>

Second, the Exchange proposes to add a new subsection B, and list the proposed maker/taker fees and rebates for NQX, as discussed above, in this subsection. Section

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<sup>10</sup> For purposes of the Schedule of Fees, “NDX” is defined therein as A.M. or P.M. settled options on the full value of the Nasdaq 100 Index, and therefore includes both NDX and NDXP options.

III.B will be titled, “NQX Index Options Fees and Rebates for Regular and Complex Orders” to clarify that these fees and rebates apply to executions in both regular and complex NQX orders.

Third, the Exchange proposes to add a new subsection C, and list the various Non-Priority Customer license surcharge fee amounts for the specified index options. Other than to include the proposed NQX license surcharge as further discussed below, the current fees are not being amended; rather, the existing fees in Section IV.C are being relocated into Section III.C. Section III.C will be titled, “Non-Priority Customer License Surcharge for Index Options.”

The Exchange considers it appropriate to group the index options fees as described above so that ISE’s pricing for index options may be easily located within its fee schedule. For the sake of clarity, the Exchange also proposes to note within Section I that for all executions in regular NDX, NDXP and NQX orders, the applicable index options fees in Section III will apply. The Exchange similarly proposes to note within Section II that for all executions in complex NQX orders, the NQX index options fees in Section III will apply. The Exchange believes that the proposed cross references will clarify how its pricing for NDX, NDXP and NQX will apply.

#### Priority Customer Complex Rebates

Today, the tiered Priority Customer Complex Rebates in Section II of the Schedule of Fees are not paid for NDX or NDXP. Under the Exchange’s proposal, the Priority Customer Complex Rebates will likewise not be paid for NQX.

#### Non-Priority Customer License Surcharge

Today as set forth in Section IV.C, the Exchange assesses a license surcharge of \$0.25 per contract for all Non-Priority Customer orders in NDX and NDXP, which applies to all executions in those symbols, including executions of NDX and NDXP orders that are routed to away markets in connection with the Options Order Protection and Locked/Crossed Market Plan (the “Plan”).<sup>11</sup> The Exchange now proposes to apply the \$0.25 per contract Non-Priority Customer license surcharge to NQX in order to recoup the costs associated with listing this proprietary product. Unlike NDX and NDXP, the Exchange is not proposing to apply this surcharge to NQX orders that are routed away at this time because NQX is currently listed exclusively on ISE. If NQX begins listing on any of the other Nasdaq, Inc.-owned exchanges, the Exchange will file any necessary rule change proposals with the Commission to apply the \$0.25 per contract surcharge in addition to the \$0.95 per contract route-out fee for those NQX orders that are routed away.<sup>12</sup>

#### Marketing Fee

By way of background, the Exchange administers a marketing fee program that helps Market Makers establish marketing fee arrangements with EAMs in exchange for those EAMs routing some or all of their order flow to the Market Maker. This program is funded through a fee of \$0.70 per contract, which is paid by Market Makers for each regular Priority Customer contract executed in Non-Select Symbols.<sup>13</sup> This fee is

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<sup>11</sup> The Exchange applies a route-out fee to executions of orders in all symbols that are routed to away markets in connection with the Plan. Specifically, Non-Priority Customer orders in Non-Select Symbols pay a route-out fee of \$0.95 per contract. NDX and NDXP are Non-Select Symbols. See Schedule of Fees, Section IV.F.

<sup>12</sup> NQX is a Non-Select Symbol.

<sup>13</sup> See Schedule of Fees, Section IV.E.

currently waived for NDX and NDXP orders. The Exchange proposes to similarly waive the marketing fee for NQX orders.

#### Crossing Fee Cap

As set forth in Section IV.H of the Schedule of Fees, the Exchange currently caps Crossing Order fees at \$90,000 per month per member on all Firm Proprietary<sup>14</sup> and Non-Nasdaq ISE Market Maker<sup>15</sup> transactions that are part of the originating or contra side of a Crossing Order. Surcharge fees charged by the Exchange for licensed products (e.g., the \$0.25 per contract license surcharge for NDX and NDXP) and the fees for index options as set forth in Section I (e.g., the \$0.75 per contract fees for NDX and NDXP) are currently excluded from the calculation of this monthly fee cap. The Exchange now proposes to similarly exclude the license surcharge and fees for NQX from the calculation of the monthly Crossing Fee Cap. The Exchange also proposes to amend language in Section IV.H that currently states, “Surcharge fees charged by the Exchange for licensed products and the fees for index options as set forth in Section I...” by replacing the reference to Section I with Section III to reflect the proposed relocation of various index options fees, as further described above.

#### Clean-Up Changes

Lastly, the Exchange proposes a number of clarifying changes to its Schedule of Fees. In Section I, the Exchange proposes to amend note 6, which currently reads:

“Market Maker fees are subject to tier discounts, as provided in Section IV.C.” The

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<sup>14</sup> A "Firm Proprietary" order is an order submitted by a member for its own proprietary account.

<sup>15</sup> A "Non-Nasdaq ISE Market Maker" is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934, as amended, registered in the same options class on another options exchange.

Exchange seeks to update the reference to Section IV.C, which presently sets forth the Non-Priority Customer license surcharge for index options, to Section IV.D, which sets forth the Market Maker discount tiers.<sup>16</sup> In Section II, the Exchange proposes to delete the stray references to note 5, which is currently reserved, from the maker and taker fee schedule.<sup>17</sup>

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>18</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>19</sup> 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.

Transaction Fees for NQX Options

The Exchange believes that it is reasonable to assess the proposed maker/taker fees and rebates as discussed above for NQX because NQX will be an exclusively listed product on ISE only. Similar to NDX and NDXP, the Exchange seeks to recoup the

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<sup>16</sup> The Exchange recently filed a rule change that renumbered the subsection containing the market maker tier discounts from Section IV.C to Section IV.D, but did not update the specific references within the fee schedule. See Securities Exchange Act Release No. 83002 (April 5, 2018), 83 FR 15655 (April 11, 2018) (SR-ISE-2018-27).

<sup>17</sup> The Exchange recently filed a proposed rule change to delete the rule text within note 5, but did not delete the references to the note from maker and taker fee schedule in Section II. See Securities Exchange Act Release No. 83431 (June 14, 2018), 83 FR 28681 (June 20, 2018) (SR-ISE-2018-51).

<sup>18</sup> 15 U.S.C. 78f(b).

<sup>19</sup> 15 U.S.C. 78f(b)(4) and (5).

operational costs for listing proprietary products.<sup>20</sup> Also, pricing by symbol is a common practice on many U.S. options exchanges as a means to incentivize order flow to be sent to an exchange for execution in particular products. Other options exchanges price by symbol.<sup>21</sup> Further, the Exchange notes that with its products, market participants are offered an opportunity to either transact NQX or separately execute PowerShares QQQ Trust (“QQQ”) options.<sup>22</sup> Offering products such as QQQ provides market participants with a variety of choices in selecting the product they desire to utilize to transact the Nasdaq 100 Index.<sup>23</sup> When exchanges are able to recoup costs associated with offering proprietary products, it incentivizes growth and competition for the innovation of additional products. The Exchange also believes that it is reasonable to assess the proposed fees and rebates for both regular and complex executions in NQX options, unlike NDX and NDXP which are assessed the normal complex rates in Section II, because the Exchange believes that this will promote trading activity in NQX as further discussed above.

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<sup>20</sup> For example, in analyzing an obvious error, the Exchange would have additional data points available in establishing a theoretical price for a multiply listed option as compared to a proprietary product, which requires additional analysis and administrative time to comply with Exchange rules to resolve an obvious error.

<sup>21</sup> See pricing for Russell 2000 Index (“RUT”) on Chicago Board Options Exchange, Incorporated’s (“CBOE”) Fees Schedule and on CBOE C2 Exchange, Inc.’s (“C2”) Fees Schedule.

<sup>22</sup> QQQ is an exchange-traded fund based on the Nasdaq 100 Index.

<sup>23</sup> QQQ options overlie the same index as NDX, namely the Nasdaq 100 Index. This relationship between QQQ options and NDX options is similar to the relationship between RUT and the iShares Russell 2000 Index (“IWM”), which is the ETF on RUT.

The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to provide a maker rebate of \$0.25 per contract and assess no taker fee to Maker Makers as compared to other market participants because Market Makers, unlike other market participants, take on a number of obligations, including quoting obligations, that other market participants do not have. Further, the proposed pricing for Market Maker orders in NQX are intended to incentivize Market Makers to quote and trade more on the Exchange, thereby providing more trading opportunities for all market participants. As noted above, the \$0.25 per contract maker rebate is intended to offset the \$0.25 per contract NQX license surcharge, and the Exchange believes this will further incentivize Market Makers to provide liquidity in the new product during the initial months of trading. Additionally, the proposed NQX pricing for Market Makers will be applied equally to all Market Maker orders (including those orders sent by an EAM), as further discussed above.

The Exchange also believes that it is reasonable, equitable and not unfairly discriminatory to assess no transaction fees to Priority Customer orders in NQX because Priority Customer order flow enhances liquidity on the Exchange for the benefit of all market participants. Priority Customer liquidity provides more trading opportunities, which attracts Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. The proposed pricing for Priority Customer orders in NQX is intended to attract more Priority Customer trading volume to the Exchange. In addition, the proposed NQX pricing for Priority Customers will apply equally to all Priority Customer orders, as further discussed above.

The Exchange further believes that the proposed fee of \$0.25 per contract for Non-Nasdaq ISE Market Maker, Firm Proprietary / Broker-Dealer,<sup>24</sup> and Professional Customer<sup>25</sup> orders in NQX is reasonable, equitable and not unfairly discriminatory because they are well within the range of amounts assessed for the Exchange's other proprietary products, including the \$0.75 per contract fee charged to those market participant orders in NDX and NDXP.<sup>26</sup> The lower fee amount of \$0.25 per contract for NQX options as compared to \$0.75 per contract for NDX and NDXP options is reasonable because NQX options is based on 1/5 of the value of the Nasdaq 100 Index whereas both NDX and NDXP are based on the full value of the Nasdaq 100, and the Exchange therefore seeks to assess corresponding reduced fees for this product. In addition, the proposed pricing for Non-Nasdaq ISE Market Maker, Firm Proprietary / Broker-Dealer, and Professional Customer orders in NQX will be applied equally to those market participants, as further discussed above.

The Exchange believes that the proposed changes to eliminate language related to the NQX fee holiday, relocate and group the various index options fees within the Schedule of Fees, and make all of the clarifying changes related to the relocation, each as discussed above, are reasonable, equitable and not unfairly discriminatory. The proposed changes are all intended to bring greater clarity to the Schedule of Fees and will ensure that ISE's pricing for index options may be easily located within its fee schedule.

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<sup>24</sup> A "Broker-Dealer" order is an order submitted by a member for a broker-dealer account that is not its own proprietary account.

<sup>25</sup> A "Professional Customer" is a person or entity that is not a broker/dealer and is not a Priority Customer.

<sup>26</sup> See Index Options pricing table in the Schedule of Fees, Section I.

Finally, the Exchange believes that its proposal to remove obsolete references to specific pricing for FX options from its Schedule of Fees is reasonable, equitable and not unfairly discriminatory because FX options ceased trading on the Exchange upon the January 2018 expiry, as discussed above, and the specific pricing for FX options is therefore no longer applicable. No market participant can trade any FX options on ISE since the Exchange has determined not to list additional expiry contracts.

#### Priority Customer Complex Rebates

The Exchange believes that its proposal to eliminate the Priority Customer Complex Rebates for NQX is reasonable because even after the elimination of the rebate, Priority Customer complex orders in NQX will not be assessed any complex order transaction fees. As noted above, the Priority Customer Complex Rebates are likewise currently eliminated for NDX and NDXP. By contrast, public customer executions on C2 in RUT are subject to a \$0.15 per contract transaction fee.<sup>27</sup>

The Exchange's proposal to eliminate the Priority Customer Complex Rebates for NQX is equitable and not unfairly discriminatory because the Exchange will eliminate the rebate for all similarly situated members.

#### Non-Priority Customer License Surcharge

The Exchange believes that its proposal to charge a \$0.25 per contract Non-Priority Customer license surcharge for NQX is reasonable because the fee amount is the same as the amount for NDX and NDXP, and lower when compared to the \$0.45 per contract surcharge C2 applies to non-public customer transactions in RUT.<sup>28</sup> The

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<sup>27</sup> See C2's Fees Schedule, Section 1.C.

<sup>28</sup> See C2's Fees Schedule, Section 1.D.

proposed license surcharge for NQX will also help recoup costs associated with listing proprietary products. The Exchange also believes that its proposal to not apply the Non-Priority Customer license surcharge to NQX orders that are routed to away markets in connection with the Plan is reasonable because NQX is currently an exclusively listed product, as discussed above.

Further, the Exchange believes that its proposal to assess a Non-Priority Customer license surcharge of \$0.25 per contract to NQX options is equitable and not unfairly discriminatory because the Exchange will apply the same surcharge for all similarly situated members in a similar manner. The Exchange also believes that it is equitable and not unfairly discriminatory to not assess the surcharge to Priority Customer orders in NQX because Priority Customer orders bring valuable liquidity to the market, which in turn benefits other market participants.

#### Marketing Fee

The Exchange believes that its proposal to exclude NQX from the \$0.70 per contract marketing fee is reasonable because the purpose of the marketing fee is to attract order flow to the Exchange. Because NQX will be an exclusively listed product, a marketing fee whose purpose is to attract order flow to the Exchange is no longer necessary for NQX.

The Exchange's proposal to exclude NQX from the marketing fee is equitable and not unfairly discriminatory because the Exchange will apply this exclusion to all similarly situated members.

#### Crossing Fee Cap

The Exchange believes that its proposal to exclude the Non-Priority Customer license surcharge and transaction fees for NQX from the calculation of the monthly Crossing Fee Cap is reasonable because NQX will be an exclusively listed product. Similar to NDX and NDXP, which are also excluded from the Crossing Fee Cap, the Exchange seeks to recoup the operational costs for listing proprietary products. The Exchange further believes that the proposed exclusion of NQX from the Crossing Fee Cap is equitable and not unfairly discriminatory because the Exchange will apply the exclusion all similarly situated members. The Exchange also believes that it is reasonable, equitable and not unfairly discriminatory to amend Section IV.H to include the reference to the various index options fees in Section III, as discussed above, because it will conform Section IV.H to the changes proposed herein and clarify how this provision will be applied.

#### Clean-Up Changes

The Exchange believes that the clean-up changes to Sections I and II as described above are reasonable, equitable and not unfairly discriminatory because they are merely intended to bring greater clarity to the Schedule of Fees, to the benefit of all market participants.

#### 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 Exchange does not believe its proposal to assess different maker/taker fees and rebates to different market participants for NQX options will impose an undue burden on competition because different market participants have different obligations and circumstances, as further discussed above. For example, Market Makers have quoting

obligations that other market participants do not have. In addition, the Exchange notes that with its products, market participants are offered an opportunity to either transact NDXP or separately execute QQQ options. Offering products such as QQQ provides market participants with a variety of choices in selecting the product they desire to utilize to transact the Nasdaq 100 Index.<sup>29</sup> Furthermore, the proposed pricing changes will apply uniformly to all similarly situated market participants, as discussed above. For the foregoing reasons, the Exchange does not believe that the proposed changes to adopt pricing for NQX options as described above will impose an undue burden on competition.

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.

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.

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<sup>29</sup> See note 23 above.

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,<sup>30</sup> 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 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.

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<sup>30</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

5. Text of the proposed rule change.

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_ ; File No. SR-ISE-2018-61)

July \_\_, 2018

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to amend the Exchange's Schedule of Fees.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup>, and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 2, 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.

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.

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

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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 Exchange recently received approval to list index options on the Nasdaq 100 Reduced Value Index ("NQX") on a pilot basis.<sup>3</sup> The Exchange began to list NQX on June 26, 2018, and filed on the same day a proposed rule change that waived fees and rebates for executions in NQX options from June 26 - 29, 2018.<sup>4</sup> The Exchange now proposes to amend its Schedule of Fees to adopt pricing for NQX.

By way of background, certain proprietary products such as NDX and NDXP are commonly included in or excluded from a variety of fee and rebate programs. The Exchange notes that the reason these products are often included in or excluded from certain programs is because the Exchange has expended considerable resources developing and maintaining its proprietary products. Similar to NDX and NDXP, NQX is a proprietary product. As such, the Exchange proposes to establish transaction fees for NQX options that are similarly structured to the transaction fees for NDX and NDXP options with some differences as noted below. The Exchange also proposes to similarly include or exclude NQX options from several programs from which NDX and NDXP

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<sup>3</sup> See Securities Exchange Act Release No. 82911 (March 20, 2018), 83 FR 12966 (March 26, 2018) (SR-ISE-2017-106). The NQX options contract is the same in all respects as the current Nasdaq-100 Index options contract ("NDX") listed on the Exchange, except that NQX is P.M. settled and based on 1/5 of the value of the Nasdaq 100 Index. The Exchange notes that similar features are available with other index options contracts listed on the Exchange, including P.M. settled options on the full value of the Nasdaq 100 Index ("NDXP").

<sup>4</sup> See SR-ISE-2018-58 (not yet published).

options are currently included or excluded. Lastly, the Exchange proposes a number of clarifying changes to the Schedule of Fees. Each change is discussed below.

#### Transaction Fees for NQX Options

The Exchange proposes to establish transaction fees and rebates for adding or removing liquidity from ISE (i.e., maker/taker fees and rebates) in NQX options. The proposed maker/taker fees and rebates for NQX will apply to executions in both the regular and complex order book, according to the following schedule:

<b>Market Participant</b>	<b>Maker Fee / Rebate</b>	<b>Taker Fee / Rebate</b>
Market Maker	(\$0.25)	\$0.00
Market Maker (for orders sent by Electronic Access Members)	(\$0.25)	\$0.00
Non-Nasdaq ISE Market Maker (FarMM)	\$0.25	\$0.25
Firm Proprietary / Broker-Dealer	\$0.25	\$0.25
Professional Customer	\$0.25	\$0.25
Priority Customer	\$0.00	\$0.00

The proposed pricing for NQX is similarly structured to how the Exchange currently prices its other proprietary products, NDX and NDXP, in that Non-Priority Customers,<sup>5</sup> except for Market Makers (i.e., Primary Market Makers and Competitive Market Makers) in this case, will be charged uniform transaction fees and Priority Customers<sup>6</sup> will not be charged any fees.<sup>7</sup> Furthermore, the proposed pricing for NQX

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<sup>5</sup> “Non-Priority Customers” include Market Makers, Non-Nasdaq ISE Market Makers, Firm Proprietary / Broker-Dealers, and Professional Customers.

<sup>6</sup> A "Priority Customer" is a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s), as defined in Nasdaq ISE Rule 100(a)(37A).

will similarly apply to all executions in NQX, including Non-Priority Customer Crossing Orders<sup>8</sup> in NQX. Unlike NDX and NDXP, which are currently charged the applicable complex order fees for Non-Select Symbols (i.e., options overlying all symbols that are not in the Penny Program) in Section II, the proposed pricing for NQX applies to both regular and complex executions in NQX orders. The Exchange believes that this will promote trading activity in the new product since complex executions in Non-Priority Customer NQX orders will mainly be charged at a lower rate.<sup>9</sup>

The proposed pricing for Market Maker orders, including those orders sent by Electronic Access Members (“EAMs”), is intended to encourage Market Maker activity in NQX, and the Exchange believes that the \$0.25 per contract maker rebate and taker fee waiver for Market Maker orders will provide such incentive. In addition, the proposed \$0.25 per contract maker rebate is intended to offset the proposed NQX license surcharge, as further discussed below, and will further incentivize Market Makers to provide liquidity in the new product during the initial months of trading.

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<sup>7</sup> See Securities Exchange Act Releases No. 80637 (May 10, 2017), 82 FR 22576 (May 16, 2017) (SR-ISE-2017-35) (among other changes, establishing flat transaction fees for executions of regular NDX orders) and No. 83144 (May 1, 2018), 83 FR 20107 (May 7, 2018) (SR-ISE-2018-38) (among other changes, establishing flat transaction fees for executions of regular NDXP orders).

<sup>8</sup> 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 order. For purposes of the fee schedule, orders executed in the Block Order Mechanism are also considered Crossing Orders.

<sup>9</sup> For instance, a Non-Priority Customer complex order in a Non-Select Symbol (when trading against a Priority Customer) would normally be charged maker/taker fees ranging from \$0.86 to \$0.88 per contract. See Maker and Taker fee schedule in Section II. NQX is a Non-Select Symbol.

In connection the foregoing changes, the Exchange proposes to remove language related to the NQX fee holiday from June 26 - 30, 2018 from its Schedule of Fees. The Exchange also proposes to relocate the pricing for NDX and NDXP presently set forth in the separate table entitled “Index Options” within Section I, and the Non-Priority Customer license surcharge for index options presently within Section IV.C, to group them with the proposed fees and rebates for NQX. The Exchange proposes to set forth the foregoing index options fees in Section III, which currently contains pricing for FX options, and retitle that section as “Index Options Fees and Rebates.” FX options ceased trading on the Exchange upon the January 2018 expiry, after which the Exchange determined not to list additional expiry contracts for FX options. No market participant has traded FX options on the Exchange as of the January 2018 expiry. As such, the Exchange proposes to remove all references to specific pricing for FX options from its Schedule of Fees.

The Exchange proposes in the new Section III to restructure the index options fees described above into three separate subsections. First, the Exchange proposes to add a new subsection A, and list the transaction fees for NDX and NDXP in this subsection. As noted above, the fees are not being amended; rather, the existing fees in Section I are being relocated into Section III.A. The rule text in corresponding note 7 in Section I will be deleted since the substance is being relocated to Section III.A. Section III.A will be titled, “NDX Index Options Fees for Regular Orders” to clarify that these fees apply to executions in regular NDX and NDXP orders only, and the Exchange will separately note

in Section III.A that for all executions in complex NDX and NDXP orders, the applicable complex order fees for Non-Select Symbols in Section II will apply.<sup>10</sup>

Second, the Exchange proposes to add a new subsection B, and list the proposed maker/taker fees and rebates for NQX, as discussed above, in this subsection. Section III.B will be titled, “NQX Index Options Fees and Rebates for Regular and Complex Orders” to clarify that these fees and rebates apply to executions in both regular and complex NQX orders.

Third, the Exchange proposes to add a new subsection C, and list the various Non-Priority Customer license surcharge fee amounts for the specified index options. Other than to include the proposed NQX license surcharge as further discussed below, the current fees are not being amended; rather, the existing fees in Section IV.C are being relocated into Section III.C. Section III.C will be titled, “Non-Priority Customer License Surcharge for Index Options.”

The Exchange considers it appropriate to group the index options fees as described above so that ISE’s pricing for index options may be easily located within its fee schedule. For the sake of clarity, the Exchange also proposes to note within Section I that for all executions in regular NDX, NDXP and NQX orders, the applicable index options fees in Section III will apply. The Exchange similarly proposes to note within Section II that for all executions in complex NQX orders, the NQX index options fees in Section III will apply. The Exchange believes that the proposed cross references will clarify how its pricing for NDX, NDXP and NQX will apply.

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<sup>10</sup> For purposes of the Schedule of Fees, “NDX” is defined therein as A.M. or P.M. settled options on the full value of the Nasdaq 100 Index, and therefore includes both NDX and NDXP options.

### Priority Customer Complex Rebates

Today, the tiered Priority Customer Complex Rebates in Section II of the Schedule of Fees are not paid for NDX or NDXP. Under the Exchange's proposal, the Priority Customer Complex Rebates will likewise not be paid for NQX.

### Non-Priority Customer License Surcharge

Today as set forth in Section IV.C, the Exchange assesses a license surcharge of \$0.25 per contract for all Non-Priority Customer orders in NDX and NDXP, which applies to all executions in those symbols, including executions of NDX and NDXP orders that are routed to away markets in connection with the Options Order Protection and Locked/Crossed Market Plan (the "Plan").<sup>11</sup> The Exchange now proposes to apply the \$0.25 per contract Non-Priority Customer license surcharge to NQX in order to recoup the costs associated with listing this proprietary product. Unlike NDX and NDXP, the Exchange is not proposing to apply this surcharge to NQX orders that are routed away at this time because NQX is currently listed exclusively on ISE. If NQX begins listing on any of the other Nasdaq, Inc.-owned exchanges, the Exchange will file any necessary rule change proposals with the Commission to apply the \$0.25 per contract surcharge in addition to the \$0.95 per contract route-out fee for those NQX orders that are routed away.<sup>12</sup>

### Marketing Fee

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<sup>11</sup> The Exchange applies a route-out fee to executions of orders in all symbols that are routed to away markets in connection with the Plan. Specifically, Non-Priority Customer orders in Non-Select Symbols pay a route-out fee of \$0.95 per contract. NDX and NDXP are Non-Select Symbols. See Schedule of Fees, Section IV.F.

<sup>12</sup> NQX is a Non-Select Symbol.

By way of background, the Exchange administers a marketing fee program that helps Market Makers establish marketing fee arrangements with EAMs in exchange for those EAMs routing some or all of their order flow to the Market Maker. This program is funded through a fee of \$0.70 per contract, which is paid by Market Makers for each regular Priority Customer contract executed in Non-Select Symbols.<sup>13</sup> This fee is currently waived for NDX and NDXP orders. The Exchange proposes to similarly waive the marketing fee for NQX orders.

#### Crossing Fee Cap

As set forth in Section IV.H of the Schedule of Fees, the Exchange currently caps Crossing Order fees at \$90,000 per month per member on all Firm Proprietary<sup>14</sup> and Non-Nasdaq ISE Market Maker<sup>15</sup> transactions that are part of the originating or contra side of a Crossing Order. Surcharge fees charged by the Exchange for licensed products (e.g., the \$0.25 per contract license surcharge for NDX and NDXP) and the fees for index options as set forth in Section I (e.g., the \$0.75 per contract fees for NDX and NDXP) are currently excluded from the calculation of this monthly fee cap. The Exchange now proposes to similarly exclude the license surcharge and fees for NQX from the calculation of the monthly Crossing Fee Cap. The Exchange also proposes to amend language in Section IV.H that currently states, “Surcharge fees charged by the Exchange for licensed products and the fees for index options as set forth in Section I...” by

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<sup>13</sup> See Schedule of Fees, Section IV.E.

<sup>14</sup> A "Firm Proprietary" order is an order submitted by a member for its own proprietary account.

<sup>15</sup> A "Non-Nasdaq ISE Market Maker" is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934, as amended, registered in the same options class on another options exchange.

replacing the reference to Section I with Section III to reflect the proposed relocation of various index options fees, as further described above.

#### Clean-Up Changes

Lastly, the Exchange proposes a number of clarifying changes to its Schedule of Fees. In Section I, the Exchange proposes to amend note 6, which currently reads:

“Market Maker fees are subject to tier discounts, as provided in Section IV.C.” The Exchange seeks to update the reference to Section IV.C, which presently sets forth the Non-Priority Customer license surcharge for index options, to Section IV.D, which sets forth the Market Maker discount tiers.<sup>16</sup> In Section II, the Exchange proposes to delete the stray references to note 5, which is currently reserved, from the maker and taker fee schedule.<sup>17</sup>

#### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>18</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>19</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees, and

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<sup>16</sup> The Exchange recently filed a rule change that renumbered the subsection containing the market maker tier discounts from Section IV.C to Section IV.D, but did not update the specific references within the fee schedule. See Securities Exchange Act Release No. 83002 (April 5, 2018), 83 FR 15655 (April 11, 2018) (SR-ISE-2018-27).

<sup>17</sup> The Exchange recently filed a proposed rule change to delete the rule text within note 5, but did not delete the references to the note from maker and taker fee schedule in Section II. See Securities Exchange Act Release No. 83431 (June 14, 2018), 83 FR 28681 (June 20, 2018) (SR-ISE-2018-51).

<sup>18</sup> 15 U.S.C. 78f(b).

<sup>19</sup> 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.

#### Transaction Fees for NQX Options

The Exchange believes that it is reasonable to assess the proposed maker/taker fees and rebates as discussed above for NQX because NQX will be an exclusively listed product on ISE only. Similar to NDX and NDXP, the Exchange seeks to recoup the operational costs for listing proprietary products.<sup>20</sup> Also, pricing by symbol is a common practice on many U.S. options exchanges as a means to incentivize order flow to be sent to an exchange for execution in particular products. Other options exchanges price by symbol.<sup>21</sup> Further, the Exchange notes that with its products, market participants are offered an opportunity to either transact NQX or separately execute PowerShares QQQ Trust (“QQQ”) options.<sup>22</sup> Offering products such as QQQ provides market participants with a variety of choices in selecting the product they desire to utilize to transact the Nasdaq 100 Index.<sup>23</sup> When exchanges are able to recoup costs associated with offering proprietary products, it incentivizes growth and competition for the innovation of

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<sup>20</sup> For example, in analyzing an obvious error, the Exchange would have additional data points available in establishing a theoretical price for a multiply listed option as compared to a proprietary product, which requires additional analysis and administrative time to comply with Exchange rules to resolve an obvious error.

<sup>21</sup> See pricing for Russell 2000 Index (“RUT”) on Chicago Board Options Exchange, Incorporated’s (“CBOE”) Fees Schedule and on CBOE C2 Exchange, Inc.’s (“C2”) Fees Schedule.

<sup>22</sup> QQQ is an exchange-traded fund based on the Nasdaq 100 Index.

<sup>23</sup> QQQ options overlie the same index as NDX, namely the Nasdaq 100 Index. This relationship between QQQ options and NDX options is similar to the relationship between RUT and the iShares Russell 2000 Index (“IWM”), which is the ETF on RUT.

additional products. The Exchange also believes that it is reasonable to assess the proposed fees and rebates for both regular and complex executions in NQX options, unlike NDX and NDXP which are assessed the normal complex rates in Section II, because the Exchange believes that this will promote trading activity in NQX as further discussed above.

The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to provide a maker rebate of \$0.25 per contract and assess no taker fee to Market Makers as compared to other market participants because Market Makers, unlike other market participants, take on a number of obligations, including quoting obligations, that other market participants do not have. Further, the proposed pricing for Market Maker orders in NQX are intended to incentivize Market Makers to quote and trade more on the Exchange, thereby providing more trading opportunities for all market participants. As noted above, the \$0.25 per contract maker rebate is intended to offset the \$0.25 per contract NQX license surcharge, and the Exchange believes this will further incentivize Market Makers to provide liquidity in the new product during the initial months of trading. Additionally, the proposed NQX pricing for Market Makers will be applied equally to all Market Maker orders (including those orders sent by an EAM), as further discussed above.

The Exchange also believes that it is reasonable, equitable and not unfairly discriminatory to assess no transaction fees to Priority Customer orders in NQX because Priority Customer order flow enhances liquidity on the Exchange for the benefit of all market participants. Priority Customer liquidity provides more trading opportunities, which attracts Market Makers. An increase in the activity of these market participants in

turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. The proposed pricing for Priority Customer orders in NQX is intended to attract more Priority Customer trading volume to the Exchange. In addition, the proposed NQX pricing for Priority Customers will apply equally to all Priority Customer orders, as further discussed above.

The Exchange further believes that the proposed fee of \$0.25 per contract for Non-Nasdaq ISE Market Maker, Firm Proprietary / Broker-Dealer,<sup>24</sup> and Professional Customer<sup>25</sup> orders in NQX is reasonable, equitable and not unfairly discriminatory because they are well within the range of amounts assessed for the Exchange's other proprietary products, including the \$0.75 per contract fee charged to those market participant orders in NDX and NDXP.<sup>26</sup> The lower fee amount of \$0.25 per contract for NQX options as compared to \$0.75 per contract for NDX and NDXP options is reasonable because NQX options is based on 1/5 of the value of the Nasdaq 100 Index whereas both NDX and NDXP are based on the full value of the Nasdaq 100, and the Exchange therefore seeks to assess corresponding reduced fees for this product. In addition, the proposed pricing for Non-Nasdaq ISE Market Maker, Firm Proprietary / Broker-Dealer, and Professional Customer orders in NQX will be applied equally to those market participants, as further discussed above.

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<sup>24</sup> A "Broker-Dealer" order is an order submitted by a member for a broker-dealer account that is not its own proprietary account.

<sup>25</sup> A "Professional Customer" is a person or entity that is not a broker/dealer and is not a Priority Customer.

<sup>26</sup> See Index Options pricing table in the Schedule of Fees, Section I.

The Exchange believes that the proposed changes to eliminate language related to the NQX fee holiday, relocate and group the various index options fees within the Schedule of Fees, and make all of the clarifying changes related to the relocation, each as discussed above, are reasonable, equitable and not unfairly discriminatory. The proposed changes are all intended to bring greater clarity to the Schedule of Fees and will ensure that ISE's pricing for index options may be easily located within its fee schedule. Finally, the Exchange believes that its proposal to remove obsolete references to specific pricing for FX options from its Schedule of Fees is reasonable, equitable and not unfairly discriminatory because FX options ceased trading on the Exchange upon the January 2018 expiry, as discussed above, and the specific pricing for FX options is therefore no longer applicable. No market participant can trade any FX options on ISE since the Exchange has determined not to list additional expiry contracts.

#### Priority Customer Complex Rebates

The Exchange believes that its proposal to eliminate the Priority Customer Complex Rebates for NQX is reasonable because even after the elimination of the rebate, Priority Customer complex orders in NQX will not be assessed any complex order transaction fees. As noted above, the Priority Customer Complex Rebates are likewise currently eliminated for NDX and NDXP. By contrast, public customer executions on C2 in RUT are subject to a \$0.15 per contract transaction fee.<sup>27</sup>

The Exchange's proposal to eliminate the Priority Customer Complex Rebates for NQX is equitable and not unfairly discriminatory because the Exchange will eliminate the rebate for all similarly situated members.

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<sup>27</sup> See C2's Fees Schedule, Section 1.C.

### Non-Priority Customer License Surcharge

The Exchange believes that its proposal to charge a \$0.25 per contract Non-Priority Customer license surcharge for NQX is reasonable because the fee amount is the same as the amount for NDX and NDXP, and lower when compared to the \$0.45 per contract surcharge C2 applies to non-public customer transactions in RUT.<sup>28</sup> The proposed license surcharge for NQX will also help recoup costs associated with listing proprietary products. The Exchange also believes that its proposal to not apply the Non-Priority Customer license surcharge to NQX orders that are routed to away markets in connection with the Plan is reasonable because NQX is currently an exclusively listed product, as discussed above.

Further, the Exchange believes that its proposal to assess a Non-Priority Customer license surcharge of \$0.25 per contract to NQX options is equitable and not unfairly discriminatory because the Exchange will apply the same surcharge for all similarly situated members in a similar manner. The Exchange also believes that it is equitable and not unfairly discriminatory to not assess the surcharge to Priority Customer orders in NQX because Priority Customer orders bring valuable liquidity to the market, which in turn benefits other market participants.

### Marketing Fee

The Exchange believes that its proposal to exclude NQX from the \$0.70 per contract marketing fee is reasonable because the purpose of the marketing fee is to attract order flow to the Exchange. Because NQX will be an exclusively listed product, a

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<sup>28</sup> See C2's Fees Schedule, Section 1.D.

marketing fee whose purpose is to attract order flow to the Exchange is no longer necessary for NQX.

The Exchange's proposal to exclude NQX from the marketing fee is equitable and not unfairly discriminatory because the Exchange will apply this exclusion to all similarly situated members.

#### Crossing Fee Cap

The Exchange believes that its proposal to exclude the Non-Priority Customer license surcharge and transaction fees for NQX from the calculation of the monthly Crossing Fee Cap is reasonable because NQX will be an exclusively listed product. Similar to NDX and NDXP, which are also excluded from the Crossing Fee Cap, the Exchange seeks to recoup the operational costs for listing proprietary products. The Exchange further believes that the proposed exclusion of NQX from the Crossing Fee Cap is equitable and not unfairly discriminatory because the Exchange will apply the exclusion all similarly situated members. The Exchange also believes that it is reasonable, equitable and not unfairly discriminatory to amend Section IV.H to include the reference to the various index options fees in Section III, as discussed above, because it will conform Section IV.H to the changes proposed herein and clarify how this provision will be applied.

#### Clean-Up Changes

The Exchange believes that the clean-up changes to Sections I and II as described above are reasonable, equitable and not unfairly discriminatory because they are merely intended to bring greater clarity to the Schedule of Fees, to the benefit of all market participants.

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 Exchange does not believe its proposal to assess different maker/taker fees and rebates to different market participants for NQX options will impose an undue burden on competition because different market participants have different obligations and circumstances, as further discussed above. For example, Market Makers have quoting obligations that other market participants do not have. In addition, the Exchange notes that with its products, market participants are offered an opportunity to either transact NDXP or separately execute QQQ options. Offering products such as QQQ provides market participants with a variety of choices in selecting the product they desire to utilize to transact the Nasdaq 100 Index.<sup>29</sup> Furthermore, the proposed pricing changes will apply uniformly to all similarly situated market participants, as discussed above. For the foregoing reasons, the Exchange does not believe that the proposed changes to adopt pricing for NQX options as described above will impose an undue burden on competition.

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

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<sup>29</sup> See note 23 above.

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.

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.<sup>30</sup> 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

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<sup>30</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-ISE-2018-61 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-2018-61. 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-2018-61 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.<sup>31</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>31</sup> 17 CFR 200.30-3(a)(12).

**EXHIBIT 5**

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

### Nasdaq ISE Schedule of Fees

#### PREFACE

[There will be no fees or rebates for trades in NOX options executed from June 26 - 29, 2018. Volume executed in NOX options during this period will continue to be counted toward a member's tier for June activity.]

\* \* \* \* \*

["**FX Option Symbols**" are options overlying AUM, GBP, EUU and NDO.]

["**Early Adopter FX Option Symbols**" are options overlying NZD, PZO, SKA, BRB, AUX, BPX, CDD, EUI, YUK and SFC.]

\* \* \* \* \*

#### I. Regular Order Fees and Rebates

\* \* \* \* \*

#### Non-Select Symbols (Excluding Index Options) <sup>(7)</sup>

Market Participant	Fee	Fee for Crossing Orders	Fee for PIM Orders	Fee for Responses to Crossing Orders	Fee for Responses to PIM Orders
		Except PIM Orders <sup>(1)(2)</sup>	<sup>(1)</sup> <sup>(2)(13)</sup>	Except PIM Orders	
Market Maker	\$0.25 <sup>(6)</sup>	\$0.25 <sup>(6)</sup>	\$0.10	\$0.50	\$0.25
Market Maker (for orders sent by Electronic Access Members)	\$0.20	\$0.20	\$0.10	\$0.50	\$0.25
Non-Nasdaq ISE Market Maker (FarMM)	\$0.72	\$0.20	\$0.10	\$0.50	\$0.25
Firm Proprietary / Broker-Dealer	\$0.72	\$0.20	\$0.10	\$0.50	\$0.25
Professional Customer	\$0.72	\$0.20 <sup>(16)</sup>	\$0.10	\$0.50	\$0.25
Priority Customer	\$0.00	\$0.00	\$0.00	\$0.50	\$0.25

**[Index Options<sup>(7)</sup>**

<b>Market Participant</b>	<b>Fee</b>
Market Maker	\$0.75
Market Maker (for orders sent by Electronic Access Members)	\$0.75
Non-Nasdaq ISE Market Maker (FarMM)	\$0.75
Firm Proprietary / Broker-Dealer	\$0.75
Professional Customer	\$0.75
Priority Customer	\$0.00]

\* \* \* \* \*

6. Market Maker fees are subject to tier discounts, as provided in Section IV.[C]D.

7. [The index option fees apply only to NDX. These fees are assessed to all executions in NDX] For all executions in regular NDX and NOX orders, the applicable index options fees in Section III will apply.

\* \* \* \* \*

**II. Complex Order Fees and Rebates <sup>(5)</sup>(12) (15)**

\* \* \* \* \*

**Maker and Taker Fees**

<b>Market Participant</b>	<b>Maker Fee for Select Symbols</b>	<b>Maker Fee for Non-Select Symbols</b>	<b>Maker Fee for Select Symbols when trading against Priority Customer<sup>[(5)]</sup></b>	<b>Maker Fee for non-Select Symbols when trading against Priority Customer<sup>[(5)]</sup></b>	<b>Taker Fee for Select Symbols<sup>[(5)]</sup></b>	<b>Taker Fee for Non-Select Symbols<sup>[(5)]</sup></b>
Market Maker	\$0.10	\$0.20	\$0.47 <sup>(3)</sup>	\$0.86	\$0.50 <sup>(3)</sup>	\$0.86 <sup>(8)</sup>
Non-Nasdaq ISE Market Maker (FarMM)	\$0.20	\$0.20	\$0.48	\$0.88	\$0.50	\$0.88 <sup>(8)</sup>
Firm Proprietary / Broker-Dealer	\$0.10	\$0.20	\$0.48	\$0.88	\$0.50	\$0.88 <sup>(8)</sup>
Professional Customer	\$0.10	\$0.20	\$0.48	\$0.88	\$0.50	\$0.88 <sup>(8)</sup>
Priority Customer	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00

\* \* \* \* \*

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

5. [Reserved] For all executions in complex NOX orders, the NOX index options fees in Section III will apply.

\* \* \* \* \*

### **III. [FX Options Fees and Rebates for Regular and Complex Orders] Index Options Fees and Rebates**

<b>[Market Participant</b>	<b>Fee</b>	<b>Fee for Crossing Orders<sup>(1)(7)</sup></b>	<b>Fee for PIM Orders of 100 or Fewer Contracts<sup>(1)(4)(5)(7)</sup></b>	<b>Fee for Responses to Crossing Orders</b>	<b>PIM Break-up Rebate<sup>(6)</sup></b>
Early Adopter Market Maker <sup>(2)</sup>	\$0.00	\$0.00	\$0.00	\$0.00	N/A
Market Maker	\$0.25 <sup>(3)</sup>	\$0.25 <sup>(3)</sup>	\$0.05	\$0.47	N/A
Market Maker (for orders sent by Electronic Access Members)	\$0.20	\$0.20	\$0.05	\$0.47	(\$0.15)
Non-Nasdaq ISE Market Maker (FarMM) Firm	\$0.50	\$0.20	\$0.05	\$0.47	(\$0.15)
Proprietary / Broker-Dealer	\$0.50	\$0.20	\$0.05	\$0.47	(\$0.15)
Professional Customer	\$0.50	\$0.20	\$0.05	\$0.47	(\$0.15)
Priority Customer in Early Adopter FX Option Symbols	\$0.40	\$0.40	\$0.40	\$0.47	(\$0.15)
Priority Customer	\$0.40	\$0.40	\$0.40	\$0.47	(\$0.15)

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

2. An Early Adopter Market Maker is a market maker that entered into a revenue sharing agreement with the Exchange on or before March 30, 2012 to make markets in Early Adopter FX Option Symbols. Transaction fee revenue sharing for Early Adopter PMM: 40%. Shared revenue for an Early Adopter PMM is based on transaction fees assessed to Priority Customer contract sides. Transaction fee revenue sharing for Early Adopter CMMs: 20%. Shared revenue for an Early Adopter CMM is based on transaction fees assessed to Priority Customer contract sides for trades done with that Early Adopter CMM.

3. Market Maker fees are subject to tier discounts, as provided in Section IV.C.

4. PIM orders of more than 100 contracts will pay the Fee for Crossing Orders.
5. Other than for Priority Customer orders, this fee is \$0.03 per contract for orders executed by Members that have an ADV of 20,000 or more Priority Customer contracts in a given month executed in the PIM. This discounted fee is applied retroactively to all eligible PIM volume in that month once the threshold has been reached.
6. Rebate provided for contracts that are submitted to PIM that do not trade with their contra order. The applicable fee is applied to any contracts for which a rebate is provided.
7. Fees apply to the originating and contra order.]

#### **A. NDX Index Options Fees for Regular Orders<sup>(1)</sup>**

<b><u>Market Participant</u></b>	<b><u>Fee</u></b>
<u>Market Maker</u>	<u>\$0.75</u>
<u>Market Maker (for orders sent by Electronic Access Members)</u>	<u>\$0.75</u>
<u>Non-Nasdaq ISE Market Maker (FarMM)</u>	<u>\$0.75</u>
<u>Firm Proprietary / Broker-Dealer</u>	<u>\$0.75</u>
<u>Professional Customer</u>	<u>\$0.75</u>
<u>Priority Customer</u>	<u>\$0.00</u>

1. For all executions in complex NDX orders, the applicable complex order fees for Non-Select Symbols in Section II will apply.

#### **B. NOX Index Options Fees and Rebates for Regular and Complex Orders**

<b><u>Market Participant</u></b>	<b><u>Maker Fee / Rebate</u></b>	<b><u>Taker Fee / Rebate</u></b>
<u>Market Maker</u>	<u>(\$0.25)</u>	<u>\$0.00</u>
<u>Market Maker (for orders sent by Electronic Access Members)</u>	<u>(\$0.25)</u>	<u>\$0.00</u>
<u>Non-Nasdaq ISE Market Maker (FarMM)</u>	<u>\$0.25</u>	<u>\$0.25</u>
<u>Firm Proprietary / Broker-Dealer</u>	<u>\$0.25</u>	<u>\$0.25</u>
<u>Professional Customer</u>	<u>\$0.25</u>	<u>\$0.25</u>
<u>Priority Customer</u>	<u>\$0.00</u>	<u>\$0.00</u>

#### **C. Non-Priority Customer License Surcharge for Index Options**

<b><u>Symbols</u></b>	<b><u>Fee</u></b>
<u>BKX</u>	<u>\$0.10</u>
<u>NDX, NOX</u>	<u>\$0.25</u>

» 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.

#### IV. Other Options Fees and Rebates

\* \* \* \* \*

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

<b>[Symbols</b>	<b>Fee</b>
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. Nasdaq ISE Market Maker Discount Tiers

<b>Monthly Volume (contracts)</b>	<b>Fee</b>
0 to 250,000	\$0.25
250,000+	\$0.20

» Discounted fees apply to Nasdaq ISE Market Maker contracts for Regular Orders in Non-Select Symbols [as well as Regular and Complex Orders in FX Options]. Once a member reaches the highest tier, the fee applicable to that tier will apply retroactively to all Market Maker contracts for Regular Orders in Non-Select Symbols [as well as Regular and Complex Orders in FX Options. This fee applies to non-Early Adopter Market Makers in options on Early Adopter FX Option Symbols].

#### E. Marketing Fee

<b>Symbols</b>	<b>Fee</b>
	\$0.70

Non-Select Symbols

» Marketing fees apply to Nasdaq ISE Market Makers for each Regular Priority Customer contract executed except as noted below.

» Marketing fees do not apply to Nasdaq ISE Market Makers for each Regular Priority Customer contract executed in Select Symbols.

» Marketing fees are waived [FX Options,] NDX, NOX, MNX, Flash Orders and for Complex Orders in all symbols.

» The marketing fee will be rebated proportionately to the members that paid the fee such that on a monthly basis the marketing fee fund balance administered by a Primary Market Maker for a Group of options established under Rule 802(b) does not exceed \$100,000 and the marketing fee fund balance administered by a preferenced Competitive Market Maker for such a Group does not exceed \$100,000. A preferenced Competitive Market Maker that elects not

to administer a fund will not be charged the marketing fee. The Exchange assesses an administrative fee of .45% on the total amount of the funds collected each month.

\* \* \* \* \*

#### **H. Crossing Fee Cap**

Fees are capped at \$90,000 per month per member on all Firm Proprietary and Non-Nasdaq ISE Market Maker transactions that are part of the originating or contra side of a Crossing Order. Members that elect prior to the start of the month to pay \$65,000 per month will have these crossing fees capped at that level instead. Crossing Orders are contracts that are submitted as part of a Facilitation, Solicitation, PIM, Block or QCC order. All eligible volume from affiliated Members will be aggregated for purposes of the Crossing Fee Cap, provided there is at least 75% common ownership between the Members as reflected on each Member's Form BD, Schedule A. Fees charged by the Exchange for Responses to Crossing Orders are not included in the calculation of the monthly fee cap. Surcharge fees charged by the Exchange for licensed products and the fees for index options as set forth in Section [I]III are not included in the calculation of the monthly fee cap. A service fee of \$0.00 per side will apply to all order types that are eligible for the fee cap. The service fee shall apply once a member reaches the fee cap level and shall apply to every contract side above the fee cap. A member who does not reach the monthly fee cap will not be charged the service fee. Once the fee cap is reached, the service fee shall apply to eligible Firm Proprietary and Non-Nasdaq ISE Market Maker orders in all Nasdaq ISE products. The service fee is not calculated in reaching the cap. For purposes of the Crossing Fee Cap the Exchange will attribute eligible volume to the ISE Member on whose behalf the Crossing Order was executed.

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