

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * <input type="text" value="31"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input type="text" value="2018"/> - * <input type="text" value="81"/>	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 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 \*).

Proposal to establish new pricing for Flash Orders within Section I of the Schedule of Fees and eliminate Section IV.G. of the Exchange Schedule of Fees.

**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="Angela"/>	Last Name * <input type="text" value="Dunn"/>
Title * <input type="text" value="Principal Associate General Counsel"/>	
E-mail * <input type="text" value="Angela.Dunn@nasdaq.com"/>	
Telephone * <input type="text" value="(215) 496-5692"/>	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="09/18/2018"/>	<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"/>

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**

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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 establish new pricing for Flash Orders within Section I of the Schedule of Fees and eliminate Section IV.G. of the Exchange’s Schedule of Fees.

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:

Angela Dunn  
Principal Associate General Counsel  
Nasdaq, Inc.  
(215) 496-5692

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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 proposes to establish new fees for Flash Orders<sup>3</sup> on ISE and remove the current pricing at Section IV.G of the Exchange's Schedule of Fees applicable to Flash Orders. The Exchange is proposing to relocate its pricing for Flash Orders within Section I, entitled "Regular Order Fees and Rebates." The Exchange also proposes to amend the Flash Order definition in the Preface of the Schedule of Fees. The Exchange proposes to reserve Section IV.G.

Definition of a Flash Order

The Exchange proposes to add further detail to the definition of Flash Orders within the Preface of the Schedule of Fees to indicate the applicability of the pricing. Today, the Exchange assesses the applicable "Taker" Fee for the initiation of a Flash Order and does not assess any "Maker" Fee for responses.<sup>4</sup> The Exchange proposes to amend the definition of the term Flash Order by stating, unless otherwise noted in Section I pricing, Flash Orders will be assessed the applicable "Taker" Fee for the initiation of a Flash Order and will be paid/assessed the applicable "Maker" Rebate/Fee for responses.<sup>5</sup>

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<sup>3</sup> Nasdaq ISE's Schedule of Fees currently defines a "Flash Order" as an order that is exposed at the National Best Bid and Offer by the Exchange to all Members for execution prior to routing the order to another exchange or cancelling it, as provided under Supplementary Material .02 to ISE Rule 1901.

<sup>4</sup> However, the Exchange would pay any rebate offered in its Schedule of Fees. Today, the Maker Rebate is offered to Market Makers that qualify for the Market Maker Plus Tier.

<sup>5</sup> The Market Maker would not be assessed the \$0.10 per contract Section I Maker Fee where the Market Maker participates in the Market Maker Plus program. A Market Maker would be assessed the \$0.10 per contract fee in symbols where the Market Maker is not quoting. If the Market Maker executed a Flash Order contra

The Exchange believes that adding this language will make clear what fee or rebate applies when an order initiates a Flash Order and when an order responds to a Flash Order.

The Exchange believes that Flash Orders, which initiate auctions, should be treated as “Taker” because the Member would be removing liquidity on ISE in the event the Member’s interest was exposed as a Flash Order. A Member responding to a Flash Order would therefore be providing liquidity when executing against the Flash Order and therefore should be assessed a Maker Fee. The Exchange believes that Flash Orders encourage Members to price orders fairly to obtain a local execution on ISE.

#### Section 1 Amendments

The Exchange proposes to eliminate the Flash Order pricing within Section IV. G of the Schedule of Fees and relocate and amend its current Flash Order pricing within Section I of the Schedule of Fees.

The Exchange proposes to memorialize that any market participant’s order that initiates a Flash Order will be assessed the appropriate Taker Fee in Section I of the Schedule of Fees.<sup>6</sup> The Exchange also proposes a new fee such that a market participant

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a Priority Customer, the Market Maker would qualify for the \$0.05 credit in addition to any Market Maker Plus tier rebate.

<sup>6</sup> For Select Symbols the Taker Fee is currently \$0.45 per contract for Market Makers, \$0.46 per contract for Non-Nasdaq ISE Market Maker (FarMM), Firm Proprietary/Broker-Dealer and Professional Customer and \$0.44 per contract for Priority Customer, except in SPY, QQQ, IWM and VXX where the fee shall be \$0.40 per contract. For Non-Select Symbols the Taker Fee would be \$0.25 per contract for Market Maker, subject to tier discounts in Section IV. D of the Schedule of Fees, \$0.20 per contract for Market Maker orders sent by an Electronic Access Member, \$0.72 per contract for a Non-Nasdaq ISE Market Maker (FarMM), Firm Proprietary/Broker-Dealer and Professional Customer. Priority Customers are assessed no transaction Taker Fee in Non-Select Symbols.

responding to a Flash Order will be paid/assessed the appropriate Maker Rebate<sup>7</sup>/Fee in Section I of the Schedule of Fees.<sup>8</sup> The Exchange proposes to pay a credit of \$0.05 per contract to a market participant responding to a Flash Order in a Select or Non-Select Symbol contra a Priority Customer. The Exchange notes that the \$0.05 per contract credit would be paid in addition to the discounted Market Maker tiers in Section IV.D, as is the case today and any Market Maker Plus rebates would also be paid.

Today, all market participants are being assessed a Taker Fee. Today, no market participant responding to a Flash Order is assessed a Maker Fee in Section I. Today a credit of \$0.05 per contract is paid to a market participant trading against a Priority Customer, Professional Customer or Preferred Priority Customer<sup>9</sup> in a Select Symbol or a Professional Customer in a Non-Select Symbol. With this proposal, Taker Fees

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<sup>7</sup> See note 4 above.

<sup>8</sup> For Select Symbols the Maker Fee is currently \$0.10 per contract for Market Makers, except that (i) Market Makers that qualify for Market Maker Plus will not pay this fee if they meet the applicable tier thresholds set forth in the table within Section I of the Schedule of Fees and will instead receive a rebate based on the applicable tier for which they qualify; (ii) no fee will be charged or rebate provided when trading against non-Priority Customer Complex Orders that leg into the regular order book; and (iii) \$0.15 per contract fee applies instead of the applicable fee or rebate when trading against Priority Customer Complex Orders that leg into the regular order book, \$0.10 per contract for Non-Nasdaq ISE Market Maker (FarMM), except that a \$0.15 per contract fee applies instead of the applicable fee or rebate when trading against Priority Customer complex orders that leg into the regular order book, \$0.10 per contract for Firm Proprietary/Broker-Dealer and Professional Customer and no fee for Priority Customer. For Non-Select Symbols the Maker Fee would be \$0.25 per contract for Market Maker, subject to tier discounts in Section IV. D of the Schedule of Fees, \$0.20 per contract for Market Maker orders sent by an Electronic Access Member, \$0.72 per contract for a Non-Nasdaq ISE Market Maker (FarMM), Firm Proprietary/Broker-Dealer and Professional Customer Priority Customers are assessed no transaction Maker Fee in Non-Select Symbols.

<sup>9</sup> Credit applies to a Nasdaq ISE Market Maker when trading against a Priority Customer order that is preferred to that Market Maker.

would continue to be assessed to a market participant's order that initiates a Flash Order. With this proposal, a Maker Fee would be assessed to all market participants responding to a Flash Order, except a Priority Customer.<sup>10</sup> With this proposal, market participants executing against a Professional Customer in a Non-Select Symbol would no longer be paid a \$0.05 per contract credit. The \$0.05 per contract credit would now be paid to market participants that executed against Priority Customers in Select and Non-Select Symbols, in addition to the discounted Market Maker tiers in Section IV.D. The Exchange proposes to add language to make this clear in the Schedule of Fees within note 6. The Exchange proposes to add a new note 17 and state, "A market participant's order which initiates a Flash Order will be assessed the appropriate Taker Fee in Section I. Market participants responding to a Flash Order will be paid/assessed the appropriate Maker Rebate/Fee in Section I. In addition to aforementioned fees, a credit of \$0.05 per contract will be paid to a market participant responding to a Flash Order in a Select or Non-Select Symbols which executes contra a Priority Customer."

The Exchange believes that the proposal will bring more clarity to the Schedule of Fees with respect to Flash Orders. Also, the Exchange's proposal is intended to incentivize all ISE Members initiate or respond to a Flash Order contra a Priority Customer by submitting interest on ISE.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>11</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>12</sup>

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<sup>10</sup> Priority Customers are not assessed Maker Fee within Section I today.

<sup>11</sup> 15 U.S.C. 78f(b).

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.

#### Definition of a Flash Order

The Exchange's proposal to amend the definition of Flash Orders within the Preface is reasonable because it will add greater transparency to the applicability of the fees. The Exchange believes that indicating how the Exchange will apply Maker or Taker Fees to Flash Orders will bring greater transparency to the manner in which these fees are assessed. This amendment is equitable and not unfairly discriminatory as the Exchange will uniformly assess the Maker and Taker Fees in Section I as described in the Flash Orders definition to Members that either initiate or respond to the Flash Order.

The Exchange believes that Flash Orders, which initiate auctions, should be treated as "Taker" because the Member would be removing liquidity on ISE in the event the Member's interest was exposed as a Flash Order. A Member responding to a Flash Order would therefore be providing liquidity when executing against the Flash Order and therefore should be assessed a Maker Fee. The Exchange believes that Flash Orders encourage Members to price orders fairly to obtain a local execution on ISE.

#### Section 1 Amendments

The Exchange's proposal to eliminate Flash Order pricing within Section IV.G of the Schedule of Fees and relocate and amend its current Flash Order pricing within Section I of the Schedule of Fees is reasonable. The Exchange's proposal will uniformly pay a credit of \$0.05 per contract to any market participant responding to a Flash Order in

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<sup>12</sup> 15 U.S.C. 78f(b)(4) and (5).

a Select or Non-Select Symbol which executes contra a Priority Customer. Today, the Exchange pays a credit of \$0.05 per contract in certain circumstances such as when trading against a Priority Customer or a Professional Customer or a Preferred Priority Customer<sup>13</sup> in a Select Symbol. Also, a \$0.05 per contract credit is paid when trading against a Professional Customer in a Non-Select Symbol. Although the Exchange would not pay a credit of \$0.05 per contract to a market participant trading against a Professional Customer in a Select Symbol or a Non-Select Symbol, the Exchange would uniformly pay all market participants a \$0.05 per contract credit when transacting a Flash Order in either a Select or Non-Select Symbol, provided that the contra-side to the transaction is a Priority Customer. The Exchange does not believe that it is unfairly discriminatory to pay a credit only when trading against a Priority Customer Order and not paying a credit when transacting contra a Professional Customer because Professional Customers, unlike Priority Customers, have access to sophisticated trading systems that contain functionality not available to Priority Customers. Also, Professional Customers have the same technological and informational advantages as broker-dealers trading for their own account. The Exchange believes that Professional Customers, who are considered sophisticated algorithmic traders effectively compete with Market Makers and broker-dealers<sup>14</sup> without the obligations of either.

Also, the Exchange would now begin to assess a Maker Fee to all market participants responding to a Flash Order, except Priority Customers. While the Exchange

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<sup>13</sup> Today, the credit applies to a Nasdaq ISE Market Maker when trading against a Priority Customer order that is preferred to that Market Maker.

<sup>14</sup> Broker-Dealers pay registration and membership fees in self-regulatory organizations (“SRO”) and incur costs to comply and assure that their associated persons comply with the Act and SRO rules.

would now assess Maker Fees if responding to a Flash Order, market participants also have the opportunity with this proposal to receive a \$0.05 per contract credit for responding to a Priority Customer in Non-Select Symbols. The Exchange believes that assessing the Maker Fee is reasonable because the Exchange believes that there is more opportunity to earn a credit. The Exchange notes that Priority Customers are assessed no Maker Fee. The Exchange does not believe that it is unfairly discriminatory to not assess Priority Customers a Maker Fee because Priority Customer liquidity enhances liquidity on the Exchange for the benefit of all market participants by providing more trading opportunities, which attracts Market Makers. The Exchange's proposal to eliminate Flash Order pricing within Section IV. G of the Schedule of Fees and relocate and amend its current Flash Order pricing within Section I of the Schedule of Fees is equitable and not unfairly discriminatory. Although the Exchange would not pay a credit of \$0.05 per contract to a market participant trading against a Professional Customer in a Select Symbol or a Professional Customer in a Non-Select Symbol, the Exchange would uniformly pay all market participants a \$0.05 per contract credit when transacting a Flash Order in either a Select or Non-Select Symbol, provided that the contra-side to the transaction is a Priority Customer. The Exchange believes that it is equitable and not unfairly discriminatory to assess market participants who respond to a Flash Order a Section I Maker Fee because the Exchange would be uniformly assessing the fee uniformly to all market participants. The Exchange does not believe that it is unfairly discriminatory to pay a credit only when trading against a Priority Customer Order and not another type of market participant because unlike other order flow, Priority Customer Order flow enhances liquidity on the Exchange for the benefit of all market participants

by providing more trading opportunities, which attracts Market Makers. The Exchange believes that the proposed changes provide all market participants that trade on ISE an opportunity to earn an additional rebate when executing against Priority Customer Orders.

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 is amending existing Flash Order pricing to more uniformly apply this pricing to all market participants and therefore does not believe this proposal will cause an undue burden on inter-market competition. The Exchange believes that the proposed pricing remains competitive. The Exchange notes that Professional Customers, unlike Priority Customers, have access to sophisticated trading systems that contain functionality not available to Priority Customers. Also, Professional Customers have the same technological and informational advantages as broker-dealers trading for their own account. The Exchange believes that Professional Customers, who are considered sophisticated algorithmic traders effectively compete with Market Makers and broker-dealers<sup>15</sup> without the obligations of either. Priority Customer liquidity enhances liquidity on the Exchange for the benefit of all market participants by providing more trading opportunities, which attracts Market Makers.

The Exchange's proposal to eliminate Flash Order pricing within Section IV.G of the Schedule of Fees and relocate and amend its current Flash Order pricing within Section I of the Schedule of Fees does not impose an undue burden on competition.

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<sup>15</sup> See note 14 above.

Although the Exchange would not pay a credit of \$0.05 per contract to a market participant trading against a Professional Customer in a Select Symbol or a Non-Select Symbol, the Exchange would uniformly pay all market participants a \$0.05 per contract credit when transacting a Flash Order in either a Select or Non-Select Symbol, provided that the contra-side to the transaction is a Priority Customer. The Exchange believes that it does not impose an undue burden on competition to assess market participants who respond to a Flash Order a Section I Maker Fee because the Exchange would be uniformly assessing the fee uniformly to all market participants. The Exchange does not believe that it is unfairly discriminatory to pay a credit only when trading against a Priority Customer Order because this type of order flow enhances liquidity on the Exchange for the benefit of all market participants by providing more trading opportunities, which attracts Market Makers. The Exchange notes that Professional Customers, unlike Priority Customers, have access to sophisticated trading systems that contain functionality not available to Priority Customers. Also, Professional Customers have the same technological and informational advantages as broker-dealers trading for their own account. The Exchange believes that Professional Customers, who are considered sophisticated algorithmic traders effectively compete with Market Makers and broker-dealers<sup>16</sup> without the obligations of either. Priority Customer liquidity enhances liquidity on the Exchange for the benefit of all market participants by providing more trading opportunities, which attracts Market Makers. The Exchange is amending existing Flash Order pricing to provide all market participants that trade on ISE an opportunity to

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<sup>16</sup> See note 14 above.

earn an additional credit in Non-Select Symbols when executing against Priority Customer Orders.

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,<sup>17</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.

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<sup>17</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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-2018-81)

September \_\_, 2018

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish New Pricing for Flash Orders

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 September 18, 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 establish new pricing for Flash Orders within Section I of the Schedule of Fees and eliminate Section IV.G. of 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

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

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

received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange proposes to establish new fees for Flash Orders<sup>3</sup> on ISE and remove the current pricing at Section IV.G of the Exchange's Schedule of Fees applicable to Flash Orders. The Exchange is proposing to relocate its pricing for Flash Orders within Section I, entitled "Regular Order Fees and Rebates." The Exchange also proposes to amend the Flash Order definition in the Preface of the Schedule of Fees. The Exchange proposes to reserve Section IV.G.

Definition of a Flash Order

The Exchange proposes to add further detail to the definition of Flash Orders within the Preface of the Schedule of Fees to indicate the applicability of the pricing. Today, the Exchange assesses the applicable "Taker" Fee for the initiation of a Flash Order and does not assess any "Maker" Fee for responses.<sup>4</sup> The Exchange proposes to amend the definition of the term Flash Order by stating, unless otherwise noted in Section I pricing, Flash Orders will be assessed the applicable "Taker" Fee for the initiation of a

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<sup>3</sup> Nasdaq ISE's Schedule of Fees currently defines a "Flash Order" as an order that is exposed at the National Best Bid and Offer by the Exchange to all Members for execution prior to routing the order to another exchange or cancelling it, as provided under Supplementary Material .02 to ISE Rule 1901.

<sup>4</sup> However, the Exchange would pay any rebate offered in its Schedule of Fees. Today, the Maker Rebate is offered to Market Makers that qualify for the Market Maker Plus Tier.

Flash Order and will be paid/assessed the applicable “Maker” Rebate/Fee for responses.<sup>5</sup>

The Exchange believes that adding this language will make clear what fee or rebate applies when an order initiates a Flash Order and when an order responds to a Flash Order.

The Exchange believes that Flash Orders, which initiate auctions, should be treated as “Taker” because the Member would be removing liquidity on ISE in the event the Member’s interest was exposed as a Flash Order. A Member responding to a Flash Order would therefore be providing liquidity when executing against the Flash Order and therefore should be assessed a Maker Fee. The Exchange believes that Flash Orders encourage Members to price orders fairly to obtain a local execution on ISE.

#### Section 1 Amendments

The Exchange proposes to eliminate the Flash Order pricing within Section IV. G of the Schedule of Fees and relocate and amend its current Flash Order pricing within Section I of the Schedule of Fees.

The Exchange proposes to memorialize that any market participant’s order that initiates a Flash Order will be assessed the appropriate Taker Fee in Section I of the Schedule of Fees.<sup>6</sup> The Exchange also proposes a new fee such that a market participant

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<sup>5</sup> The Market Maker would not be assessed the \$0.10 per contract Section I Maker Fee where the Market Maker participates in the Market Maker Plus program. A Market Maker would be assessed the \$0.10 per contract fee in symbols where the Market Maker is not quoting. If the Market Maker executed a Flash Order contra a Priority Customer, the Market Maker would qualify for the \$0.05 credit in addition to any Market Maker Plus tier rebate.

<sup>6</sup> For Select Symbols the Taker Fee is currently \$0.45 per contract for Market Makers, \$0.46 per contract for Non-Nasdaq ISE Market Maker (FarMM), Firm Proprietary/Broker-Dealer and Professional Customer and \$0.44 per contract for Priority Customer, except in SPY, QQQ, IWM and VXX where the fee shall be \$0.40 per contract. For Non-Select Symbols the Taker Fee would be \$0.25 per

responding to a Flash Order will be paid/assessed the appropriate Maker Rebate<sup>7</sup>/Fee in Section I of the Schedule of Fees.<sup>8</sup> The Exchange proposes to pay a credit of \$0.05 per contract to a market participant responding to a Flash Order in a Select or Non-Select Symbol contra a Priority Customer. The Exchange notes that the \$0.05 per contract credit would be paid in addition to the discounted Market Maker tiers in Section IV.D, as is the case today and any Market Maker Plus rebates would also be paid.

Today, all market participants are being assessed a Taker Fee. Today, no market participant responding to a Flash Order is assessed a Maker Fee in Section I. Today a credit of \$0.05 per contract is paid to a market participant trading against a Priority

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contact for Market Maker, subject to tier discounts in Section IV. D of the Schedule of Fees, \$0.20 per contract for Market Maker orders sent by an Electronic Access Member, \$0.72 per contract for a Non-Nasdaq ISE Market Maker (FarMM), Firm Proprietary/Broker-Dealer and Professional Customer Priority Customers are assessed no transaction Taker Fee in Non-Select Symbols.

<sup>7</sup> See note 4 above.

<sup>8</sup> For Select Symbols the Maker Fee is currently \$0.10 per contract for Market Makers, except that (i) Market Makers that qualify for Market Maker Plus will not pay this fee if they meet the applicable tier thresholds set forth in the table within Section I of the Schedule of Fees and will instead receive a rebate based on the applicable tier for which they qualify; (ii) no fee will be charged or rebate provided when trading against non-Priority Customer Complex Orders that leg into the regular order book; and (iii) \$0.15 per contract fee applies instead of the applicable fee or rebate when trading against Priority Customer Complex Orders that leg into the regular order book, \$0.10 per contract for Non-Nasdaq ISE Market Maker (FarMM), except that a \$0.15 per contract fee applies instead of the applicable fee or rebate when trading against Priority Customer complex orders that leg into the regular order book, \$0.10 per contract for Firm Proprietary/Broker-Dealer and Professional Customer and no fee for Priority Customer. For Non-Select Symbols the Maker Fee would be \$0.25 per contact for Market Maker, subject to tier discounts in Section IV. D of the Schedule of Fees, \$0.20 per contract for Market Maker orders sent by an Electronic Access Member, \$0.72 per contract for a Non-Nasdaq ISE Market Maker (FarMM), Firm Proprietary/Broker-Dealer and Professional Customer Priority Customers are assessed no transaction Maker Fee in Non-Select Symbols.

Customer, Professional Customer or Preferred Priority Customer<sup>9</sup> in a Select Symbol or a Professional Customer in a Non-Select Symbol. With this proposal, Taker Fees would continue to be assessed to a market participant's order that initiates a Flash Order. With this proposal, a Maker Fee would be assessed to all market participants responding to a Flash Order, except a Priority Customer.<sup>10</sup> With this proposal, market participants executing against a Professional Customer in a Non-Select Symbol would no longer be paid a \$0.05 per contract credit. The \$0.05 per contract credit would now be paid to market participants that executed against Priority Customers in Select and Non-Select Symbols, in addition to the discounted Market Maker tiers in Section IV.D. The Exchange proposes to add language to make this clear in the Schedule of Fees within note 6. The Exchange proposes to add a new note 17 and state, "A market participant's order which initiates a Flash Order will be assessed the appropriate Taker Fee in Section I. Market participants responding to a Flash Order will be paid/assessed the appropriate Maker Rebate/Fee in Section I. In addition to aforementioned fees, a credit of \$0.05 per contract will be paid to a market participant responding to a Flash Order in a Select or Non-Select Symbols which executes contra a Priority Customer."

The Exchange believes that the proposal will bring more clarity to the Schedule of Fees with respect to Flash Orders. Also, the Exchange's proposal is intended to incentivize all ISE Members initiate or respond to a Flash Order contra a Priority Customer by submitting interest on ISE.

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<sup>9</sup> Credit applies to a Nasdaq ISE Market Maker when trading against a Priority Customer order that is preferenced to that Market Maker.

<sup>10</sup> Priority Customers are not assessed Maker Fee within Section I today.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>11</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>12</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.

### Definition of a Flash Order

The Exchange's proposal to amend the definition of Flash Orders within the Preface is reasonable because it will add greater transparency to the applicability of the fees. The Exchange believes that indicating how the Exchange will apply Maker or Taker Fees to Flash Orders will bring greater transparency to the manner in which these fees are assessed. This amendment is equitable and not unfairly discriminatory as the Exchange will uniformly assess the Maker and Taker Fees in Section I as described in the Flash Orders definition to Members that either initiate or respond to the Flash Order.

The Exchange believes that Flash Orders, which initiate auctions, should be treated as "Taker" because the Member would be removing liquidity on ISE in the event the Member's interest was exposed as a Flash Order. A Member responding to a Flash Order would therefore be providing liquidity when executing against the Flash Order and therefore should be assessed a Maker Fee. The Exchange believes that Flash Orders encourage Members to price orders fairly to obtain a local execution on ISE.

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<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(4) and (5).

Section 1 Amendments

The Exchange's proposal to eliminate Flash Order pricing within Section IV.G of the Schedule of Fees and relocate and amend its current Flash Order pricing within Section I of the Schedule of Fees is reasonable. The Exchange's proposal will uniformly pay a credit of \$0.05 per contract to any market participant responding to a Flash Order in a Select or Non-Select Symbol which executes contra a Priority Customer. Today, the Exchange pays a credit of \$0.05 per contract in certain circumstances such as when trading against a Priority Customer or a Professional Customer or a Preferred Priority Customer<sup>13</sup> in a Select Symbol. Also, a \$0.05 per contract credit is paid when trading against a Professional Customer in a Non-Select Symbol. Although the Exchange would not pay a credit of \$0.05 per contract to a market participant trading against a Professional Customer in a Select Symbol or a Non-Select Symbol, the Exchange would uniformly pay all market participants a \$0.05 per contract credit when transacting a Flash Order in either a Select or Non-Select Symbol, provided that the contra-side to the transaction is a Priority Customer. The Exchange does not believe that it is unfairly discriminatory to pay a credit only when trading against a Priority Customer Order and not paying a credit when transacting contra a Professional Customer because Professional Customers, unlike Priority Customers, have access to sophisticated trading systems that contain functionality not available to Priority Customers. Also, Professional Customers have the same technological and informational advantages as broker-dealers trading for their own account. The Exchange believes that Professional Customers, who are

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<sup>13</sup> Today, the credit applies to a Nasdaq ISE Market Maker when trading against a Priority Customer order that is preferred to that Market Maker.

considered sophisticated algorithmic traders effectively compete with Market Makers and broker-dealers<sup>14</sup> without the obligations of either.

Also, the Exchange would now begin to assess a Maker Fee to all market participants responding to a Flash Order, except Priority Customers. While the Exchange would now assess Maker Fees if responding to a Flash Order, market participants also have the opportunity with this proposal to receive a \$0.05 per contract credit for responding to a Priority Customer in Non-Select Symbols. The Exchange believes that assessing the Maker Fee is reasonable because the Exchange believes that there is more opportunity to earn a credit. The Exchange notes that Priority Customers are assessed no Maker Fee. The Exchange does not believe that it is unfairly discriminatory to not assess Priority Customers a Maker Fee because Priority Customer liquidity enhances liquidity on the Exchange for the benefit of all market participants by providing more trading opportunities, which attracts Market Makers. The Exchange's proposal to eliminate Flash Order pricing within Section IV. G of the Schedule of Fees and relocate and amend its current Flash Order pricing within Section I of the Schedule of Fees is equitable and not unfairly discriminatory. Although the Exchange would not pay a credit of \$0.05 per contract to a market participant trading against a Professional Customer in a Select Symbol or a Professional Customer in a Non-Select Symbol, the Exchange would uniformly pay all market participants a \$0.05 per contract credit when transacting a Flash Order in either a Select or Non-Select Symbol, provided that the contra-side to the transaction is a Priority Customer. The Exchange believes that it is equitable and not

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<sup>14</sup> Broker-Dealers pay registration and membership fees in self-regulatory organizations ("SRO") and incur costs to comply and assure that their associated persons comply with the Act and SRO rules.

unfairly discriminatory to assess market participants who respond to a Flash Order a Section I Maker Fee because the Exchange would be uniformly assessing the fee uniformly to all market participants. The Exchange does not believe that it is unfairly discriminatory to pay a credit only when trading against a Priority Customer Order and not another type of market participant because unlike other order flow, Priority Customer Order flow enhances liquidity on the Exchange for the benefit of all market participants by providing more trading opportunities, which attracts Market Makers. The Exchange believes that the proposed changes provide all market participants that trade on ISE an opportunity to earn an additional rebate when executing against Priority Customer Orders.

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 is amending existing Flash Order pricing to more uniformly apply this pricing to all market participants and therefore does not believe this proposal will cause an undue burden on inter-market competition. The Exchange believes that the proposed pricing remains competitive. The Exchange notes that Professional Customers, unlike Priority Customers, have access to sophisticated trading systems that contain functionality not available to Priority Customers. Also, Professional Customers have the same technological and informational advantages as broker-dealers trading for their own account. The Exchange believes that Professional Customers, who are considered sophisticated algorithmic traders effectively compete with Market Makers and broker-

dealers<sup>15</sup> without the obligations of either. Priority Customer liquidity enhances liquidity on the Exchange for the benefit of all market participants by providing more trading opportunities, which attracts Market Makers.

The Exchange's proposal to eliminate Flash Order pricing within Section IV.G of the Schedule of Fees and relocate and amend its current Flash Order pricing within Section I of the Schedule of Fees does not impose an undue burden on competition. Although the Exchange would not pay a credit of \$0.05 per contract to a market participant trading against a Professional Customer in a Select Symbol or a Non-Select Symbol, the Exchange would uniformly pay all market participants a \$0.05 per contract credit when transacting a Flash Order in either a Select or Non-Select Symbol, provided that the contra-side to the transaction is a Priority Customer. The Exchange believes that it does not impose an undue burden on competition to assess market participants who respond to a Flash Order a Section I Maker Fee because the Exchange would be uniformly assessing the fee uniformly to all market participants. The Exchange does not believe that it is unfairly discriminatory to pay a credit only when trading against a Priority Customer Order because this type of order flow enhances liquidity on the Exchange for the benefit of all market participants by providing more trading opportunities, which attracts Market Makers. The Exchange notes that Professional Customers, unlike Priority Customers, have access to sophisticated trading systems that contain functionality not available to Priority Customers. Also, Professional Customers have the same technological and informational advantages as broker-dealers trading for their own account. The Exchange believes that Professional Customers, who are

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<sup>15</sup> See note 14 above.

considered sophisticated algorithmic traders effectively compete with Market Makers and broker-dealers<sup>16</sup> without the obligations of either. Priority Customer liquidity enhances liquidity on the Exchange for the benefit of all market participants by providing more trading opportunities, which attracts Market Makers. The Exchange is amending existing Flash Order pricing to provide all market participants that trade on ISE an opportunity to earn an additional credit in Non-Select Symbols when executing against Priority Customer Orders.

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>17</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.

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<sup>16</sup> See note 14 above.

<sup>17</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-ISE-2018-81 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-2018-81. 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-2018-81 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>18</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>18</sup> 17 CFR 200.30-3(a)(12).

**EXHIBIT 5**

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

**Nasdaq ISE Rulebook**

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**Nasdaq ISE Schedule of Fees**

**PREFACE**

\* \* \* \* \*

A “**Flash Order**” is an order that is exposed at the National Best Bid or Offer by the Exchange to all members for execution, as provided under Supplementary Material .02 to Nasdaq ISE Rule 1901. Unless otherwise noted in Section I pricing, Flash Orders will be assessed the applicable “Taker” Fee for the initiation of a Flash Order and will be paid/assessed the applicable “Maker” Rebate/Fee for responses.

“**NDX**” means A.M. or P.M. settled options on the full value of the Nasdaq 100® Index.

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## I. Regular Order Fees and Rebates

**Select Symbols**

<b>Market Participant</b>	<b>Maker Rebate / Fee <sup>(17)</sup></b>	<b>Taker Fee <sup>(17)</sup></b>	<b>Fee for Crossing Orders Except PIM Orders <sup>(1) (2)</sup></b>	<b>Fee for PIM Orders <sup>(1) (2) (13)</sup></b>	<b>Fee for Responses to Crossing Orders Except PIM Orders</b>	<b>Fee for Responses to PIM Orders</b>	<b>Facilitation and Solicitation Break-up Rebate <sup>(4)</sup></b>
Market Maker <sup>(8)</sup>	\$0.10 <sup>(5) (10) (11)</sup>	\$0.45	\$0.20	\$0.10	\$0.50	\$0.25	N/A
Non-Nasdaq ISE Market Maker (FarMM)	\$0.10 <sup>(11)</sup>	\$0.46	\$0.20	\$0.10	\$0.50	\$0.25	(\$0.15)
Firm Proprietary / Broker-Dealer	\$0.10	\$0.46	\$0.20	\$0.10	\$0.50	\$0.25	(\$0.15)
Professional Customer	\$0.10	\$0.46	\$0.20 <sup>(16)</sup>	\$0.10	\$0.50	\$0.25	(\$0.15)
Priority Customer	\$0.00	\$0.44 <sup>(3)</sup>	\$0.00	\$0.00	\$0.50	\$0.25	(\$0.15)

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

<b>Market Participant</b>	<b>Fee<sup>(17)</sup></b>	<b>Fee for Crossing Orders Except PIM Orders<sup>(1) (2)</sup></b>	<b>Fee for PIM Orders<sup>(1) (2)(13)</sup></b>	<b>Fee for Responses to Crossing Orders Except PIM Orders</b>	<b>Fee for Responses to PIM Orders</b>
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

\* \* \* \* \*

6. Market Maker fees are subject to tier discounts, as provided in Section IV.D. The credits noted in note 17 will also apply.

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

17. A Market participant's order which initiates a Flash Order will be assessed the appropriate Taker Fee in Section I. Market participants responding to a Flash Order will be paid/assessed the appropriate Maker Rebate/Fee in Section I. In addition to

aforementioned fees, a credit of \$0.05 per contract will be paid to a market participant responding to a Flash Order in a Select or Non-Select Symbols which executes contra a Priority Customer.

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**IV. Other Options Fees and Rebates**

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**G. [Credit for Responses to Flash Orders]Reserved.**

<b>[Symbols</b>	<b>Trading Against:</b>	<b>Credit]</b>
[Select Symbols	Priority Customer	(\$0.05)]
[Select Symbols	Professional Customer	(\$0.05)]
[Select Symbols	Preferred Priority Customer <sup>(1)</sup>	(\$0.05)]
[Non-Select Symbols	Professional Customer	(\$0.05)]
[All Symbols	Non-Customer <sup>(2)</sup>	N/A]

[<sup>(1)</sup> Credit applies to a Nasdaq ISE Market Maker when trading against a Priority Customer order that is preferred to that market maker.]

[<sup>(2)</sup> No Fee charged or credit provided.]

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