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

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 42

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

File No.* SR - 2020 - * 01
Amendment No. (req. for Amendments *)

Filing by Nasdaq ISE, LLC

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial *	Amendment *	Withdrawal	Section 19(b)(2) *	Section 19(b)(3)(A) *	Section 19(b)(3)(B) *
☑	☐	☐	☐	☑	☐

Pilot ☐

Extension of Time Period for Commission Action * ☐

Date Expires *

Rule

☐ 19b-4(f)(1) ☐ 19b-4(f)(4)
☑ 19b-4(f)(2) ☐ 19b-4(f)(5)
☐ 19b-4(f)(3) ☐ 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Section 806(e)(1) * ☐

Section 806(e)(2) * ☐

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934

Section 3C(b)(2) * ☐

Exhibit 2 Sent As Paper Document ☐

Exhibit 3 Sent As Paper Document ☐

Description

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

A proposal to amend the Exchanges Pricing Schedule at Options 7

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 * Sun
Last Name * Kim
Title * Associate General Counsel
E-mail * sun.kim@nasdaq.com
Telephone * (212) 231-5106
Fax

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date 01/02/2020

By John Zecca

(Name *)

(Title *)

EVP and Chief Legal Counsel

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

john.zecca@nasdaq.com

Required fields are shown with yellow backgrounds and asterisks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information * Add Remove View	The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.
Exhibit 1 - Notice of Proposed Rule Change * Add Remove View	The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO] -xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)
Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies * Add Remove View	The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO] -xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)
Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications Add Remove View Exhibit Sent As Paper Document ☐	Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.
Exhibit 3 - Form, Report, or Questionnaire Add Remove View Exhibit Sent As Paper Document ☐	Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.
Exhibit 4 - Marked Copies Add Remove View	The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.
Exhibit 5 - Proposed Rule Text Add Remove View	The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.
Partial Amendment Add Remove View	If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) Nasdaq ISE, LLC ("ISE" or "Exchange"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] is filing with the Securities and Exchange Commission ("SEC" or "Commission") a proposal to amend the Exchange's Pricing Schedule at Options 7, as described further 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 25, 2019. 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

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

2 17 CFR 240.19b-4.

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

a. Purpose

The purpose of the proposed rule change is to amend the Exchange's Pricing Schedule at Options 7. Each change is described below.

Priority Customer Complex Legging Rebate

Currently, the Exchange provides rebates to Priority Customer[3] complex orders that trade with non-Priority Customer complex orders in the complex order book or trade with quotes and orders on the regular order book. This program is designed to encourage Members to bring complex volume to the Exchange, including incentivizing Members to bring Priority Customer complex orders specifically to earn the associated rebates. Rebates are tiered based on a percentage of total industry volume.[4] There are currently nine Priority Customer Complex Tiers as follows:[5]

---

3 A "Priority Customer" is a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s), as defined in Nasdaq ISE Options 1, Section 1(a)(36).

4 The Priority Customer Complex Tiers are based on total Affiliated Member or Affiliated Entity complex order volume (excluding Crossing Orders and Responses to Crossing Orders) calculated as a percentage of total national volume cleared at The Options Clearing Corporation in the Customer range in equity and ETF options for that month (hereinafter, "Complex Order Volume Percentage"). All complex order volume executed on the Exchange, including volume executed by Affiliated Members, is included in the volume calculation, except for volume executed as Crossing Orders and Responses to Crossing Orders. Affiliated Entities may also aggregate their complex order volume for purposes of calculating Priority Customer rebates. The Appointed OFP would receive the rebate associated with the qualifying volume tier based on aggregated volume.

5 The rebate for the highest tier volume achieved is applied retroactively to all eligible Priority Customer complex volume once the threshold has been reached. Members will not receive rebates for net zero complex orders. For purposes of determining which complex orders qualify as "net zero" the Exchange will count

Priority Customer Complex Tier	Complex Order Volume Percentage	Rebate for Select Symbols[6]	Rebate for Non-Select Symbols[7]
Tier 1	0.000% - 0.200%	($0.25)	($0.40)
Tier 2	Above 0.200% - 0.400%	($0.30)	($0.55)
Tier 3	Above 0.400% - 0.600%	($0.35)	($0.70)
Tier 4	Above 0.600% - 0.750%	($0.40)	($0.75)
Tier 5	Above 0.750% - 1.000%	($0.45)	($0.80)
Tier 6	Above 1.000% - 1.500%	($0.46)	($0.80)
Tier 7	Above 1.500% - 2.000%	($0.48)	($0.80)
Tier 8	Above 2.000% - 3.250%	($0.50)	($0.85)
Tier 9	Above 3.250%	($0.50)	($0.85)

Going forward, the Exchange proposes to eliminate these rebates for Priority Customer complex orders that trade with quotes and orders on the regular order book if any leg of the order is fifty contracts or more. The Exchange will continue to provide the rebate if the largest leg of such order is under fifty contracts. Rebates for Priority Customer complex orders that trade with non-Priority Customer orders in the complex order book will also remain unchanged with this proposal, and the Exchange will continue to provide such rebates to qualifying Members, regardless of size.

The proposed changes are designed to limit Members from entering larger sized complex orders (i.e., 50 or more contracts for the largest leg) to recover Priority

---

all complex orders that leg into the regular order book and are executed at a net price per contract that is within a range of $0.01 credit and $0.01 debit.

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

7 "Non-Select Symbols" are options overlying all symbols excluding Select Symbols. For Non-Select Symbols, no Priority Customer complex order rebates are paid for orders in NDX, NQX, and MNX.

Customer complex order rebates, and to reduce disincentives for Market Makers[8] to provide liquidity on the Exchange. Recently, the Exchange has observed that several market participants have been entering larger sized Priority Customer complex orders with a leg of fifty or more contracts to earn a rebate. When these complex orders do not find a counterparty in the complex order book, they may leg into the regular order book where they are typically executed by Market Makers on the individual legs who pay a fee to trade with this order flow.[9] As a result, the Market Maker's ability to provide liquidity on the Exchange is adversely affected as they are charged to trade against these larger complex orders when they leg into the regular market and execute against their quotes.

The Exchange believes that it is in the interest of a fair and orderly market to provide appropriate incentives for Market Makers to maintain quality markets. As a result, the Exchange has instituted pricing programs that are aimed at incentivizing Market Makers to provide liquidity, including, for example, the Market Maker Plus program, which rewards Market Makers for routinely quoting at the national best bid or offer.[10] By eliminating the rebate for larger sized Priority Customer complex orders that leg into the regular order book, the Exchange seeks to bolster liquidity by incentivizing

---

8 The term "Market Makers" refers to "Competitive Market Makers" and "Primary Market Makers" collectively. See Options 1, Section 1(a)(21).

9 For example, a Market Maker providing liquidity on the individual leg would typically pay a maker fee of only $0.10 per contract for trading with orders originating from the regular order book, or in the case of Market Makers that achieve Market Maker Plus status, would earn certain maker rebates instead of paying the $0.10 per contract maker fee. See Options 7, Section 3, note 5. When trading against a Priority Customer complex order that legs in from the complex order book, however, that same Market Maker is instead charged a maker fee of $0.15 per contract. See Options 7, Section 3, note 11.

10 See Options 7, Section 3, note 5.

Market Makers to post tighter and more liquid markets on ISE, to the benefit of all market participants. At the same time, smaller, more typically "retail" sized Priority Customer complex orders with less than fifty contracts for the largest leg that trade with interest on the regular order book, and Priority Customer complex orders of any size trading with non-Priority Customer orders in the complex order book, will continue to receive rebates based on the Priority Customer Complex Tier achieved, thereby continuing to incentivize Members to bring complex order flow to the Exchange to earn the rebate on their Priority Customer complex volume.

In addition, the Exchange proposes to eliminate the $0.05 per contract surcharge it currently imposes on Priority Customer complex orders in SPY that leg into the regular order book, which is applied in addition to the applicable Priority Customer complex order rebate.[11] This SPY surcharge was originally adopted to offset the costs of providing the Priority Customer complex order rebates. With the changes described above to eliminate the rebates for larger-sized Priority Customer complex orders that leg into the regular order book, the Exchange believes that it is appropriate to revisit this surcharge, and now proposes to eliminate this fee. By no longer assessing this surcharge, the Exchange seeks to fortify Member participation in the Priority Customer complex order rebate program and incentivize increased complex order volume on the Exchange.

<u>Priority Customer Complex Rebate Tiers</u>

As discussed above, the Exchange currently provides rebates to Priority Customer complex orders based on nine volume tiers. In particular, a Member must execute a

---

11 For example, if a Member qualifies for Priority Customer Complex Tier 1, the Member's Priority Customer complex orders in SPY that leg into the regular order book for non-net zero activity will earn $0.20 per contract (i.e., $0.25 per contract rebate for Select Symbols minus the $0.05 per contract SPY surcharge).

Complex Order Volume Percentage of above 1% to 1.5% to qualify for the $0.46 per contract Priority Customer Complex Tier 6 rebate. In addition, a Member must execute a Complex Order Volume Percentage of above 3.25% to qualify for the $0.50 per contract Priority Customer Complex Tier 9 rebate. Going forward, the Exchange proposes to increase the Tier 6 rebate from $0.46 to $0.47 per contract, with no changes to the corresponding Complex Order Volume Percentage. The Exchange also proposes to reduce the Tier 9 Complex Order Volume Percentage requirement from above 3.25% to above 2.75% and increase the corresponding rebate from $0.50 to $0.52 per contract. There will also be a corresponding change to Tier 8 to reduce the upper limit of the Complex Order Volume Percentage from 3.25% to 2.75%.

The Exchange notes that all Members may elect to qualify for the Priority Customer complex rebates by submitting complex order flow to the Exchange and earn a rebate on their Priority Customer complex volume. Accordingly, the proposed changes are designed to increase the amount of complex order flow Members bring to the Exchange, particularly Priority Customer complex volume, and further encourage them to contribute to a deeper, more liquid market to the benefit of all market participants.

PIM Response Fees

Today, for regular orders in Select Symbols and Non-Select Symbols, the Exchange charges all market participant orders a fee for Responses to Price Improvement Mechanism ("PIM") orders that is $0.25 per contract. For complex orders in both Select and Non-Select Symbols, the PIM Response fee is likewise $0.25 per contract for all market participant orders. The Exchange now proposes to increase the aforementioned fees to $0.35 per contract for all market participant orders.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[13] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Proposal is Reasonable

The Exchange's proposed changes to its Pricing Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In NetCoalition v. Securities and Exchange Commission[14] ("NetCoalition"), the D.C. Circuit stated, "[n]o one disputes that competition for order flow is 'fierce.' … As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'…."[15]

---

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

13 15 U.S.C. 78f(b)(4) and (5).

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

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

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options transaction services. The Exchange is only one of sixteen options exchanges to which market participants may direct their order flow. Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. Within the foregoing context, the proposal represents a reasonable attempt by the Exchange to attract additional order flow to the Exchange and increase its market share relative to its competitors.

Overall, the Exchange believes that the Priority Customer complex rebate program, as modified, is reasonable because the program is optional and all Members can choose to participate or not. In addition, the Exchange believes that it is reasonable to eliminate the rebate for Priority Customer complex orders with any leg of 50 or more contracts where such order legs into the regular order book. As explained above, Priority Customer complex orders, including these larger orders that access liquidity on the regular order book, are currently paid significant rebates by the Exchange, which are funded in part by charging higher fees to the market participants who trade against these orders. As discussed above, when these larger complex orders do not find a counterparty in the complex order book, they may leg into the regular order book where they are typically executed by Market Makers on the individual legs who pay a fee to trade with this order flow.

Market Makers may be impeded in providing liquidity when doing so may result in trading against these large Priority Customer complex orders that leg into the regular market. The Exchange believes that it is important that Market Makers be properly incentivized to maintain quality markets, and is therefore proposing to take steps to reduce the incentives for market participants to enter larger sized Priority Customer complex orders that leg into the regular market to access liquidity, and to limit this rebate to smaller sized orders that leg in. By continuing to provide this rebate to smaller Priority Customer complex orders that trade with interest on the regular order book, and Priority Customer complex orders of any size that trade with non-Priority Customer orders on the complex order book, the Exchange believes that the rebate program will remain attractive and continue to attract complex order flow, which liquidity will benefit all market participants, including Market Makers, who may trade with this volume. The Exchange believes that the proposed threshold of under fifty contracts per leg is set at an appropriate level that would allow Market Makers to more easily manage and react to these smaller, more typically retail sized orders that leg in to trade against their quotes in the regular order book.[16] The Exchange notes that fifty contracts is the threshold for "block-sized orders" entered through the Exchange's Block Order Mechanism and Facilitation Mechanism, and normally denotes the cutoff between orders of retail and institutional size on ISE.[17] With the proposed changes, the Exchange believes that Market Makers will be aided in their role of providing liquidity and maintaining quality markets to the benefit of all market participants that trade on the Exchange.

---

16 The Exchange notes that Cboe Options ("Cboe") has a similar concept of limiting certain fee incentives in its Fees Schedule for smaller sized customer orders. See, e.g., Cboe Fees Schedule, fn. 9 (waiving transaction fees for customer orders removing liquidity that are of 99 contracts or less in ETF and ETN options).

17 See Options 3, Section 11(a) and (b) for a description of the Block Order Mechanism and the Facilitation Mechanism.

The Exchange also believes that it is reasonable to eliminate the SPY surcharge for Priority Customer complex orders that leg into the regular order book. With the changes described above to eliminate rebates for larger Priority Customer complex orders that leg into the regular order book, the Exchange believes that it is appropriate to also discontinue the SPY surcharge applied to legged in complex orders. In addition, the Exchange believes that eliminating this surcharge will increase incentives for Members to bring additional complex order flow to the Exchange, which increased liquidity will benefit all market participants that trade on the Exchange.

Furthermore, the Exchange believes that the proposed changes to the Priority Customer complex order rebate program to lower the various Complex Order Volume Percentage thresholds and increase rebates in the manner described above represent a reasonable attempt by the Exchange to fortify participation in the Priority Customer complex order rebate program. In particular, the Exchange's proposal to increase the rebate for Priority Customer Complex Tier 6 from $0.46 per contract to $0.47 per contract is intended to encourage Members to submit additional amounts of complex order volume to obtain the higher rebate on their Priority Customer complex orders. The Exchange believes that the higher rebate will further incentivize Members to bring additional complex order flow, including Priority Customer complex order flow, to the Exchange. Similarly, the Exchange's proposal to lower the volume requirements for Priority Customer Complex Tiers 8 and 9, and increase the Tier 9 rebate is reasonable because this change is designed to make it easier for Members to achieve these tiers to earn the higher rebate. The proposed changes are designed to make the rebates more achievable and attractive to existing and potential program participants. As noted above, the Priority Customer complex rebate program is optional and available to all Members that choose to send complex order flow to the Exchange to earn a rebate on their Priority Customer complex volume. To the extent the program, as modified, continue to attract complex volume to the Exchange, the Exchange believes that the proposed changes would improve the Exchange's overall competitiveness and strengthen its market quality for all market participants.

The Exchange believes that it is reasonable to increase the regular and complex PIM Response fees from $0.25 to $0.35 per contract for all market participant orders. With the proposed changes, the PIM Response fees will remain significantly lower than those charged for other Responses to Crossing Order[18] on ISE.[19] Accordingly, the Exchange believes that the proposed fees will remain attractive to market participants and continue to encourage them to respond to PIM auctions, thereby increasing price improvement opportunities for PIM orders.

The Proposal is an Equitable Allocation of Fees and Rebates

The Exchange believes that its proposal is an equitable allocation of its fees and rebates among its market participants.

The Exchange believes that its proposal to eliminate the rebate for Priority Customer complex orders with any leg of 50 or more contracts where such order legs into

---

18 "Responses to Crossing Order" is any contra-side interest submitted after the commencement of an auction in the Exchange's Facilitation Mechanism, Solicited Order Mechanism, Block Order Mechanism or PIM.

19 For regular orders, the Exchange charges all market participants a $0.50 per contract Response fee for all other Crossing Orders. For complex orders, this Response fee is $0.50 per contract in Select Symbols for all market participants and in Non-Select Symbols, $0.91 per contract (Market Makers) and $0.96 per contract (all other market participants). See Options 7, Sections 3 and 4.

the regular order book is an equitable allocation of the Priority Customer complex rebates. As discussed above, this change is designed to limit market participants from entering larger Priority Customer complex orders for the purpose of earning the rebate, thereby reducing the cost of these trades to the Exchange and its Members, and incentivizing Market Makers to maintain quality markets on the Exchange. All Members may continue to qualify for these rebates, provided that their Priority Customer complex orders that trade with interest on the regular market remain under a certain size.

The Exchange believes that its proposal to discontinue the SPY surcharge for Priority Customer complex orders that leg into the regular order book is an equitable allocation of fees. With the proposed change, no market participant will be assessed the SPY surcharge on their Priority Customer complex orders that execute with interest on the regular market.

Furthermore, the proposed changes to the Priority Customer complex order rebate program to lower the volume threshold requirements and increase the rebates in the manner described above are equitable because any Member who brings complex order flow to the Exchange may qualify for the rebates. The Exchange believes that the proposed changes to Tier 6 and higher are an equitable allocation of rebates because the Exchange seeks to further incentivize all Members to bring a significant amount of complex volume to the Exchange in order to earn the highest range of Priority Customer complex rebates offered under this program. The Exchange anticipates all Members that currently qualify for these rebates will continue to do so under this proposal. To the extent the proposed changes encourage additional Members to strive for the modified tiers and thus attract more complex volume to the Exchange, this increased order flow would improve the overall quality and attractiveness of the Exchange. The Exchange notes that all market participants stand to benefit from increased liquidity as such increase promotes market depth, facilitates tighter spreads and enhances price discovery. Accordingly, the Exchange believes that the changes to Tier 6 and higher, as discussed above, are reasonably designed to provide further incentives for all Members interested in meeting the tier criteria to submit additional Priority Customer complex volume to achieve the higher rebates.

The Exchange believes that its proposal to increase the regular and complex PIM Response fees is equitable because the proposed increase will apply to all market participant orders. As discussed above, all market participant orders are currently charged a $0.25 per contract PIM Response fee, and will uniformly be charged $0.35 per contract under this proposal.

The Proposal is Not Unfairly Discriminatory

The Exchange believes that the proposed changes are not unfairly discriminatory. As it relates to the proposal to discontinue the Priority Customer complex rebate for larger sized orders (i.e., with a leg of 50 or more contracts) that leg into the regular order book, this change is intended to improve market quality by discouraging market participants from entering large sized Priority Customer complex orders for the purpose of earning the rebate, thereby reducing the cost of these trades to the Exchange and its Members, and incentivizing Market Makers to maintain quality markets on the Exchange. The Exchange does not believe that it is unfairly discriminatory to continue to offer rebates to firms that do not hit the proposed fifty contract threshold as all market participants may modify their behavior by entering smaller sized complex orders to earn the rebate, and such smaller, more retail sized orders would allow Market Makers to more easily manage and react to these orders that trade against their quotes on the regular order book. In addition, all Priority Customer complex orders that trade with non-Priority Customer orders in the complex market will continue to receive the rebates. The Exchange does not believe that it is unfairly discriminatory to provide rebates only to Priority Customer complex orders as this type of order flow enhances liquidity on the Exchange for the benefit of all market participants by providing more trading opportunities, which in turn attracts Market Makers and other market participants that may trade with this order flow. As noted above, any Member may choose to qualify for the Priority Customer complex rebates by sending the requisite volume of complex orders to earn the rebate on their Priority Customer complex orders. Thus the proposed changes will apply uniformly to all Members that bring complex order flow to the Exchange.

In addition, the Exchange believes that it is not unfairly discriminatory to eliminate the SPY surcharge for Priority Customer complex orders that leg into the regular order book. As discussed above, no market participant will be assessed the SPY surcharge on their Priority Customer complex orders that execute with interest on the regular market under the Exchange’s proposal. Accordingly, the proposed change will apply uniformly to all market participants.

The Exchange also believes that the proposed changes to Priority Customer Complex Tier 6 and higher are not unfairly discriminatory. Any Member may choose to qualify for the rebate program by sending complex order flow to the Exchange. By encouraging all Members to bring significant amounts of complex order flow (i.e., to qualify for the higher tiers) in order to earn a rebate on their Priority Customer complex orders, the Exchange seeks to provide more trading opportunities for all market participants, promote price discovery, and improve the overall market quality of the Exchange.

Lastly, the Exchange does not believe that the proposed increase in PIM Response fees is unfairly discriminatory because they will apply uniformly to all market participant orders that respond to PIM auctions. As discussed above, the Exchange believes that the proposed fees will remain attractive to market participants as they are lower than the Response fees for other Crossing Orders, and will continue to encourage market participants to respond to PIM auctions, thereby increasing price improvement opportunities for PIM 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.

Intramarket Competition

The Exchange does not believe that its proposal will place any category of Exchange participant at a competitive disadvantage. All of the proposed changes are designed to attract additional liquidity to the Exchange. The Exchange believes that the proposed enhancements to the Priority Customer complex rebate program and proposed PIM Response fees will continue to incentivize market participants to direct liquidity to the Exchange. As noted above, all market participants will benefit from any increase in market activity that the proposal effectuates. The proposed fees and rebates will apply uniformly to all similarly situated participants as discussed above, and as such, the proposed changes will not impose an undue burden on competition among Exchange participants.

Intermarket Competition

The Exchange 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. 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.

Moreover, as noted above, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and rebate changes. In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Pursuant to Section 19(b)(3)(A)(ii) of the Act,[20] 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.

5. Text of the proposed rule change.

[20] 15 U.S.C. 78s(b)(3)(A)(ii).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. ; File No. SR-ISE-2020-01)

January __, 2020

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Exchange's Pricing Schedule at Options 7

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1], and Rule 19b-4 thereunder,[2] notice is hereby given that on January 2, 2020 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 Pricing Schedule at Options 7, as described further below.

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

---

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

2 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 purpose of the proposed rule change is to amend the Exchange's Pricing Schedule at Options 7. Each change is described below.

Priority Customer Complex Legging Rebate

Currently, the Exchange provides rebates to Priority Customer[3] complex orders that trade with non-Priority Customer complex orders in the complex order book or trade with quotes and orders on the regular order book. This program is designed to encourage Members to bring complex volume to the Exchange, including incentivizing Members to bring Priority Customer complex orders specifically to earn the associated rebates. Rebates are tiered based on a percentage of total industry volume.[4] There are currently nine Priority Customer Complex Tiers as follows:[5]

---

3 A "Priority Customer" is a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s), as defined in Nasdaq ISE Options 1, Section 1(a)(36).

4 The Priority Customer Complex Tiers are based on total Affiliated Member or Affiliated Entity complex order volume (excluding Crossing Orders and Responses to Crossing Orders) calculated as a percentage of total national volume cleared at The Options Clearing Corporation in the Customer range in equity and ETF options for that month (hereinafter, "Complex Order Volume Percentage"). All complex order volume executed on the Exchange, including volume executed by Affiliated Members, is included in the volume calculation, except for volume executed as Crossing Orders and Responses to Crossing Orders. Affiliated Entities may also aggregate their complex order volume for purposes of

Priority Customer Complex Tier	Complex Order Volume Percentage	Rebate for Select Symbols[6]	Rebate for Non-Select Symbols[7]
Tier 1	0.000% - 0.200%	($0.25)	($0.40)
Tier 2	Above 0.200% - 0.400%	($0.30)	($0.55)
Tier 3	Above 0.400% - 0.600%	($0.35)	($0.70)
Tier 4	Above 0.600% - 0.750%	($0.40)	($0.75)
Tier 5	Above 0.750% - 1.000%	($0.45)	($0.80)
Tier 6	Above 1.000% - 1.500%	($0.46)	($0.80)
Tier 7	Above 1.500% - 2.000%	($0.48)	($0.80)
Tier 8	Above 2.000% - 3.250%	($0.50)	($0.85)
Tier 9	Above 3.250%	($0.50)	($0.85)

Going forward, the Exchange proposes to eliminate these rebates for Priority Customer complex orders that trade with quotes and orders on the regular order book if any leg of the order is fifty contracts or more. The Exchange will continue to provide the rebate if the largest leg of such order is under fifty contracts. Rebates for Priority Customer complex orders that trade with non-Priority Customer orders in the complex order book will also remain unchanged with this proposal, and the Exchange will continue to provide such rebates to qualifying Members, regardless of size.

---

calculating Priority Customer rebates. The Appointed OFP would receive the rebate associated with the qualifying volume tier based on aggregated volume.

5 The rebate for the highest tier volume achieved is applied retroactively to all eligible Priority Customer complex volume once the threshold has been reached. Members will not receive rebates for net zero complex orders. For purposes of determining which complex orders qualify as “net zero” the Exchange will count all complex orders that leg into the regular order book and are executed at a net price per contract that is within a range of $0.01 credit and $0.01 debit.

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

7 “Non-Select Symbols” are options overlying all symbols excluding Select Symbols. For Non-Select Symbols, no Priority Customer complex order rebates are paid for orders in NDX, NQX, and MNX.

The proposed changes are designed to limit Members from entering larger sized complex orders (i.e., 50 or more contracts for the largest leg) to recover Priority Customer complex order rebates, and to reduce disincentives for Market Makers[8] to provide liquidity on the Exchange. Recently, the Exchange has observed that several market participants have been entering larger sized Priority Customer complex orders with a leg of fifty or more contracts to earn a rebate. When these complex orders do not find a counterparty in the complex order book, they may leg into the regular order book where they are typically executed by Market Makers on the individual legs who pay a fee to trade with this order flow.[9] As a result, the Market Maker's ability to provide liquidity on the Exchange is adversely affected as they are charged to trade against these larger complex orders when they leg into the regular market and execute against their quotes.

The Exchange believes that it is in the interest of a fair and orderly market to provide appropriate incentives for Market Makers to maintain quality markets. As a result, the Exchange has instituted pricing programs that are aimed at incentivizing Market Makers to provide liquidity, including, for example, the Market Maker Plus program, which rewards Market Makers for routinely quoting at the national best bid or

---

8 The term "Market Makers" refers to "Competitive Market Makers" and "Primary Market Makers" collectively. See Options 1, Section 1(a)(21).

9 For example, a Market Maker providing liquidity on the individual leg would typically pay a maker fee of only \$0.10 per contract for trading with orders originating from the regular order book, or in the case of Market Makers that achieve Market Maker Plus status, would earn certain maker rebates instead of paying the \$0.10 per contract maker fee. See Options 7, Section 3, note 5. When trading against a Priority Customer complex order that legs in from the complex order book, however, that same Market Maker is instead charged a maker fee of \$0.15 per contract. See Options 7, Section 3, note 11.

offer.[10] By eliminating the rebate for larger sized Priority Customer complex orders that leg into the regular order book, the Exchange seeks to bolster liquidity by incentivizing Market Makers to post tighter and more liquid markets on ISE, to the benefit of all market participants. At the same time, smaller, more typically "retail" sized Priority Customer complex orders with less than fifty contracts for the largest leg that trade with interest on the regular order book, and Priority Customer complex orders of any size trading with non-Priority Customer orders in the complex order book, will continue to receive rebates based on the Priority Customer Complex Tier achieved, thereby continuing to incentivize Members to bring complex order flow to the Exchange to earn the rebate on their Priority Customer complex volume.

In addition, the Exchange proposes to eliminate the $0.05 per contract surcharge it currently imposes on Priority Customer complex orders in SPY that leg into the regular order book, which is applied in addition to the applicable Priority Customer complex order rebate.[11] This SPY surcharge was originally adopted to offset the costs of providing the Priority Customer complex order rebates. With the changes described above to eliminate the rebates for larger-sized Priority Customer complex orders that leg into the regular order book, the Exchange believes that it is appropriate to revisit this surcharge, and now proposes to eliminate this fee. By no longer assessing this surcharge, the Exchange seeks to fortify Member participation in the Priority Customer complex order rebate program and incentivize increased complex order volume on the Exchange.

---

10 See Options 7, Section 3, note 5.

11 For example, if a Member qualifies for Priority Customer Complex Tier 1, the Member's Priority Customer complex orders in SPY that leg into the regular order book for non-net zero activity will earn $0.20 per contract (i.e., $0.25 per contract rebate for Select Symbols minus the $0.05 per contract SPY surcharge).

Priority Customer Complex Rebate Tiers

As discussed above, the Exchange currently provides rebates to Priority Customer complex orders based on nine volume tiers. In particular, a Member must execute a Complex Order Volume Percentage of above 1% to 1.5% to qualify for the $0.46 per contract Priority Customer Complex Tier 6 rebate. In addition, a Member must execute a Complex Order Volume Percentage of above 3.25% to qualify for the $0.50 per contract Priority Customer Complex Tier 9 rebate. Going forward, the Exchange proposes to increase the Tier 6 rebate from $0.46 to $0.47 per contract, with no changes to the corresponding Complex Order Volume Percentage. The Exchange also proposes to reduce the Tier 9 Complex Order Volume Percentage requirement from above 3.25% to above 2.75% and increase the corresponding rebate from $0.50 to $0.52 per contract. There will also be a corresponding change to Tier 8 to reduce the upper limit of the Complex Order Volume Percentage from 3.25% to 2.75%.

The Exchange notes that all Members may elect to qualify for the Priority Customer complex rebates by submitting complex order flow to the Exchange and earn a rebate on their Priority Customer complex volume. Accordingly, the proposed changes are designed to increase the amount of complex order flow Members bring to the Exchange, particularly Priority Customer complex volume, and further encourage them to contribute to a deeper, more liquid market to the benefit of all market participants.

PIM Response Fees

Today, for regular orders in Select Symbols and Non-Select Symbols, the Exchange charges all market participant orders a fee for Responses to Price Improvement Mechanism ("PIM") orders that is $0.25 per contract. For complex orders in both Select and Non-Select Symbols, the PIM Response fee is likewise $0.25 per contract for all market participant orders. The Exchange now proposes to increase the aforementioned fees to $0.35 per contract for all market participant orders.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[13] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Proposal is Reasonable

The Exchange's proposed changes to its Pricing Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In NetCoalition v. Securities and Exchange Commission[14] ("NetCoalition"), the D.C. Circuit stated, "[n]o one disputes that competition for order flow is 'fierce.' … As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a

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

13 15 U.S.C. 78f(b)(4) and (5).

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

monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'….”[15]

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options transaction services. The Exchange is only one of sixteen options exchanges to which market participants may direct their order flow. Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. Within the foregoing context, the proposal represents a reasonable attempt by the Exchange to attract additional order flow to the Exchange and increase its market share relative to its competitors.

Overall, the Exchange believes that the Priority Customer complex rebate program, as modified, is reasonable because the program is optional and all Members can choose to participate or not. In addition, the Exchange believes that it is reasonable to eliminate the rebate for Priority Customer complex orders with any leg of 50 or more contracts where such order legs into the regular order book. As explained above, Priority Customer complex orders, including these larger orders that access liquidity on the regular order book, are currently paid significant rebates by the Exchange, which are funded in part by charging higher fees to the market participants who trade against these orders. As discussed above, when these larger complex orders do not find a counterparty in the complex order book, they may leg into the regular order book where they are

---

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

typically executed by Market Makers on the individual legs who pay a fee to trade with this order flow.

Market Makers may be impeded in providing liquidity when doing so may result in trading against these large Priority Customer complex orders that leg into the regular market. The Exchange believes that it is important that Market Makers be properly incentivized to maintain quality markets, and is therefore proposing to take steps to reduce the incentives for market participants to enter larger sized Priority Customer complex orders that leg into the regular market to access liquidity, and to limit this rebate to smaller sized orders that leg in. By continuing to provide this rebate to smaller Priority Customer complex orders that trade with interest on the regular order book, and Priority Customer complex orders of any size that trade with non-Priority Customer orders on the complex order book, the Exchange believes that the rebate program will remain attractive and continue to attract complex order flow, which liquidity will benefit all market participants, including Market Makers, who may trade with this volume. The Exchange believes that the proposed threshold of under fifty contracts per leg is set at an appropriate level that would allow Market Makers to more easily manage and react to these smaller, more typically retail sized orders that leg in to trade against their quotes in the regular order book.[16] The Exchange notes that fifty contracts is the threshold for “block-sized orders” entered through the Exchange’s Block Order Mechanism and Facilitation Mechanism, and normally denotes the cutoff between orders of retail and

---

16 The Exchange notes that Cboe Options (“Cboe”) has a similar concept of limiting certain fee incentives in its Fees Schedule for smaller sized customer orders. See, e.g., Cboe Fees Schedule, fn. 9 (waiving transaction fees for customer orders removing liquidity that are of 99 contracts or less in ETF and ETN options).

institutional size on ISE.[17] With the proposed changes, the Exchange believes that Market Makers will be aided in their role of providing liquidity and maintaining quality markets to the benefit of all market participants that trade on the Exchange.

The Exchange also believes that it is reasonable to eliminate the SPY surcharge for Priority Customer complex orders that leg into the regular order book. With the changes described above to eliminate rebates for larger Priority Customer complex orders that leg into the regular order book, the Exchange believes that it is appropriate to also discontinue the SPY surcharge applied to legged in complex orders. In addition, the Exchange believes that eliminating this surcharge will increase incentives for Members to bring additional complex order flow to the Exchange, which increased liquidity will benefit all market participants that trade on the Exchange.

Furthermore, the Exchange believes that the proposed changes to the Priority Customer complex order rebate program to lower the various Complex Order Volume Percentage thresholds and increase rebates in the manner described above represent a reasonable attempt by the Exchange to fortify participation in the Priority Customer complex order rebate program. In particular, the Exchange's proposal to increase the rebate for Priority Customer Complex Tier 6 from \$0.46 per contract to \$0.47 per contract is intended to encourage Members to submit additional amounts of complex order volume to obtain the higher rebate on their Priority Customer complex orders. The Exchange believes that the higher rebate will further incentivize Members to bring additional complex order flow, including Priority Customer complex order flow, to the Exchange. Similarly, the Exchange's proposal to lower the volume requirements for

---

17 See Options 3, Section 11(a) and (b) for a description of the Block Order Mechanism and the Facilitation Mechanism.

Priority Customer Complex Tiers 8 and 9, and increase the Tier 9 rebate is reasonable because this change is designed to make it easier for Members to achieve these tiers to earn the higher rebate. The proposed changes are designed to make the rebates more achievable and attractive to existing and potential program participants. As noted above, the Priority Customer complex rebate program is optional and available to all Members that choose to send complex order flow to the Exchange to earn a rebate on their Priority Customer complex volume. To the extent the program, as modified, continue to attract complex volume to the Exchange, the Exchange believes that the proposed changes would improve the Exchange's overall competitiveness and strengthen its market quality for all market participants.

The Exchange believes that it is reasonable to increase the regular and complex PIM Response fees from $0.25 to $0.35 per contract for all market participant orders. With the proposed changes, the PIM Response fees will remain significantly lower than those charged for other Responses to Crossing Order[18] on ISE.[19] Accordingly, the Exchange believes that the proposed fees will remain attractive to market participants and continue to encourage them to respond to PIM auctions, thereby increasing price improvement opportunities for PIM orders.

<u>The Proposal is an Equitable Allocation of Fees and Rebates</u>

---

18 "Responses to Crossing Order" is any contra-side interest submitted after the commencement of an auction in the Exchange's Facilitation Mechanism, Solicited Order Mechanism, Block Order Mechanism or PIM.

19 For regular orders, the Exchange charges all market participants a $0.50 per contract Response fee for all other Crossing Orders. For complex orders, this Response fee is $0.50 per contract in Select Symbols for all market participants and in Non-Select Symbols, $0.91 per contract (Market Makers) and $0.96 per contract (all other market participants). <u>See</u> Options 7, Sections 3 and 4.

The Exchange believes that its proposal is an equitable allocation of its fees and rebates among its market participants.

The Exchange believes that its proposal to eliminate the rebate for Priority Customer complex orders with any leg of 50 or more contracts where such order legs into the regular order book is an equitable allocation of the Priority Customer complex rebates. As discussed above, this change is designed to limit market participants from entering larger Priority Customer complex orders for the purpose of earning the rebate, thereby reducing the cost of these trades to the Exchange and its Members, and incentivizing Market Makers to maintain quality markets on the Exchange. All Members may continue to qualify for these rebates, provided that their Priority Customer complex orders that trade with interest on the regular market remain under a certain size.

The Exchange believes that its proposal to discontinue the SPY surcharge for Priority Customer complex orders that leg into the regular order book is an equitable allocation of fees. With the proposed change, no market participant will be assessed the SPY surcharge on their Priority Customer complex orders that execute with interest on the regular market.

Furthermore, the proposed changes to the Priority Customer complex order rebate program to lower the volume threshold requirements and increase the rebates in the manner described above are equitable because any Member who brings complex order flow to the Exchange may qualify for the rebates. The Exchange believes that the proposed changes to Tier 6 and higher are an equitable allocation of rebates because the Exchange seeks to further incentivize all Members to bring a significant amount of complex volume to the Exchange in order to earn the highest range of Priority Customer complex rebates offered under this program. The Exchange anticipates all Members that currently qualify for these rebates will continue to do so under this proposal. To the extent the proposed changes encourage additional Members to strive for the modified tiers and thus attract more complex volume to the Exchange, this increased order flow would improve the overall quality and attractiveness of the Exchange. The Exchange notes that all market participants stand to benefit from increased liquidity as such increase promotes market depth, facilitates tighter spreads and enhances price discovery. Accordingly, the Exchange believes that the changes to Tier 6 and higher, as discussed above, are reasonably designed to provide further incentives for all Members interested in meeting the tier criteria to submit additional Priority Customer complex volume to achieve the higher rebates.

The Exchange believes that its proposal to increase the regular and complex PIM Response fees is equitable because the proposed increase will apply to all market participant orders. As discussed above, all market participant orders are currently charged a $0.25 per contract PIM Response fee, and will uniformly be charged $0.35 per contract under this proposal.

The Proposal is Not Unfairly Discriminatory

The Exchange believes that the proposed changes are not unfairly discriminatory. As it relates to the proposal to discontinue the Priority Customer complex rebate for larger sized orders (i.e., with a leg of 50 or more contracts) that leg into the regular order book, this change is intended to improve market quality by discouraging market participants from entering large sized Priority Customer complex orders for the purpose of earning the rebate, thereby reducing the cost of these trades to the Exchange and its

Members, and incentivizing Market Makers to maintain quality markets on the Exchange. The Exchange does not believe that it is unfairly discriminatory to continue to offer rebates to firms that do not hit the proposed fifty contract threshold as all market participants may modify their behavior by entering smaller sized complex orders to earn the rebate, and such smaller, more retail sized orders would allow Market Makers to more easily manage and react to these orders that trade against their quotes on the regular order book. In addition, all Priority Customer complex orders that trade with non-Priority Customer orders in the complex market will continue to receive the rebates. The Exchange does not believe that it is unfairly discriminatory to provide rebates only to Priority Customer complex orders as this type of order flow enhances liquidity on the Exchange for the benefit of all market participants by providing more trading opportunities, which in turn attracts Market Makers and other market participants that may trade with this order flow. As noted above, any Member may choose to qualify for the Priority Customer complex rebates by sending the requisite volume of complex orders to earn the rebate on their Priority Customer complex orders. Thus the proposed changes will apply uniformly to all Members that bring complex order flow to the Exchange.

In addition, the Exchange believes that it is not unfairly discriminatory to eliminate the SPY surcharge for Priority Customer complex orders that leg into the regular order book. As discussed above, no market participant will be assessed the SPY surcharge on their Priority Customer complex orders that execute with interest on the regular market under the Exchange's proposal. Accordingly, the proposed change will apply uniformly to all market participants.

The Exchange also believes that the proposed changes to Priority Customer Complex Tier 6 and higher are not unfairly discriminatory. Any Member may choose to qualify for the rebate program by sending complex order flow to the Exchange. By encouraging all Members to bring significant amounts of complex order flow (i.e., to qualify for the higher tiers) in order to earn a rebate on their Priority Customer complex orders, the Exchange seeks to provide more trading opportunities for all market participants, promote price discovery, and improve the overall market quality of the Exchange.

Lastly, the Exchange does not believe that the proposed increase in PIM Response fees is unfairly discriminatory because they will apply uniformly to all market participant orders that respond to PIM auctions. As discussed above, the Exchange believes that the proposed fees will remain attractive to market participants as they are lower than the Response fees for other Crossing Orders, and will continue to encourage market participants to respond to PIM auctions, thereby increasing price improvement opportunities for PIM orders.

B. <u>Self-Regulatory Organization's Statement on Burden on Competition</u>

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.

<u>Intramarket Competition</u>

The Exchange does not believe that its proposal will place any category of Exchange participant at a competitive disadvantage. All of the proposed changes are designed to attract additional liquidity to the Exchange. The Exchange believes that the proposed enhancements to the Priority Customer complex rebate program and proposed PIM Response fees will continue to incentivize market participants to direct liquidity to the Exchange. As noted above, all market participants will benefit from any increase in market activity that the proposal effectuates. The proposed fees and rebates will apply uniformly to all similarly situated participants as discussed above, and as such, the proposed changes will not impose an undue burden on competition among Exchange participants.

Intermarket Competition

The Exchange 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. 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.

Moreover, as noted above, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and rebate changes. In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[20] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-ISE-2020-01 on the subject line.

---

20 15 U.S.C. 78s(b)(3)(A)(ii).

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-2020-01. 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-2020-01 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.[21]

Jill M. Peterson
Assistant Secretary

---

21 17 CFR 200.30-3(a)(12).

EXHIBIT 5

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

Nasdaq ISE Rules

* * * * *

Options 7 Pricing Schedule

* * * * *

Section 3. Regular Order Fees and Rebates

Select Symbols

Market Participant	Maker Rebate / Fee[17]	Taker Fee[17]	Fee for Crossing Orders Except PIM Orders[1][2]	Fee for PIM Orders [1][2][13]	Fee for Responses to Crossing Orders Except PIM Orders	Fee for Responses to PIM Orders	Facilitation and Solicitation Break-up Rebate[4]
Market Maker[8]	$0.11[5][10][11]	$0.45	$0.20	$0.10	$0.50	$0.[25]35	N/A
Non-Nasdaq ISE Market Maker (FarMM)	$0.11[11]	$0.46	$0.20	$0.10	$0.50	$0.[25]35	($0.15)
Firm Proprietary / Broker-Dealer	$0.11	$0.46	$0.20	$0.10	$0.50	$0.[25]35	($0.15)
Professional Customer	$0.11	$0.46	$0.20[16]	$0.10	$0.50	$0.[25]35	($0.15)
Priority Customer	$0.00	$0.41[3]	$0.00	$0.00	$0.50	$0.[25]35	($0.15)

Non-Select Symbols (Excluding Index Options) [7]

Market	Fee[17]	Fee for	Fee for PIM	Fee for	Fee for

Participant		Crossing Orders Except PIM Orders[1] [2]	Orders [1] [2] [13]	Responses to Crossing Orders Except PIM Orders	Responses to PIM Orders
Market Maker	$0.25[6]	$0.25[6]	$0.10	$0.50	$0.[25]35
Market Maker (for orders sent by Electronic Access Members)	$0.20	$0.20	$0.10	$0.50	$0.[25]35
Non-Nasdaq ISE Market Maker (FarMM)	$0.72	$0.20	$0.10	$0.50	$0.[25]35
Firm Proprietary / Broker-Dealer	$0.72	$0.20	$0.10	$0.50	$0.[25]35
Professional Customer	$0.72	$0.20[16]	$0.10	$0.50	$0.[25]35
Priority Customer	$0.00	$0.00	$0.00	$0.50	$0.[25]35

* * * * *

Section 4. Complex Order Fees and Rebates[5] [12] [15]

Priority Customer Rebates

Priority Customer Complex Tier[7] [13] [16]	Total Affiliated Member or Affiliated Entity Complex Order Volume (Excluding Crossing Orders and Responses to Crossing Orders) Calculated as a Percentage of Customer Total Consolidated Volume	Rebate for Select Symbols[1] [[17]]	Rebate for Non-Select Symbols[1][4]
Tier 1	0.000% - 0.200%	($0.25)	($0.40)
Tier 2	Above 0.200% -	($0.30)	($0.55)

	0.400%		
Tier 3	Above 0.400% - 0.600%	($0.35)	($0.70)
Tier 4	Above 0.600% - 0.750%	($0.40)	($0.75)
Tier 5	Above 0.750% - 1.000%	($0.45)	($0.80)
Tier 6	Above 1.000% - 1.500%	($0.47[6])	($0.80)
Tier 7	Above 1.500% - 2.000%	($0.48)	($0.80)
Tier 8	Above 2.000% - [3.250]2.75%	($0.50)	($0.85)
Tier 9	Above [3.250]2.75%	($0.52[0])	($0.85)

* * * * *

Crossing Order Fees and Rebates

Market Participant	**Fee for Crossing Orders Except PIM Orders(6)(10)(11)**	**Fee for PIM Orders(6)(9)(11)**	**Fee for Responses to Crossing Orders Except PIM Orders for Select Symbols**	**Fee for Responses to Crossing Orders Except PIM Orders for non-Select Symbols**	**Fee for Responses to PIM Orders**	**Facilitation and Solicitation Breakup Rebate for Select Symbols(2)**
Market Maker	$0.20	$0.10	$0.50	$0.91	$0.[25]35	N/A
Non-Nasdaq ISE Market Maker (FarMM)	$0.20	$0.10	$0.50	$0.96	$0.[25]35	($0.15)
Firm Proprietary / Broker-Dealer	$0.20	$0.10	$0.50	$0.96	$0.[25]35	($0.15)
Professional Customer	$0.20(14)	$0.10	$0.50	$0.96	$0.[25]35	($0.15)

Priority Customer	$0.00	$0.00	$0.50	$0.96	$0.[25]35	($0.15)

1. Rebate provided per contract per leg if the order trades with non-Priority Customer orders in the Complex Order Book. Rebate provided per contract leg where the largest leg of the complex order is under fifty (50) contracts and [or] trades with quotes and orders on the regular order book. No Priority Customer complex order rebates will be provided if any leg of the order that trades with interest on the regular order book is fifty (50) contracts or more.

* * * * *

17. [Priority Customer Complex Orders in SPY that leg into the regular order book will be subject to a $0.05 per contract surcharge in addition to the applicable rebate]Reserved.

* * * * *