

Required fields are shown with yellow backgrounds and asterisks.

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"/>
Pilot <input type="checkbox"/>			Rule		
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 \*).

A proposal to amend the Exchanges Market Maker Plus program under Options 7, Section 3, Regular Order Fees and Rebates.

**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 \* Angela Last Name \* Dunn  
 Title \* Principal Associate General Counsel  
 E-mail \* angela.dunn@nasdaq.com  
 Telephone \* (215) 496-5692 Fax

**Signature**

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

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

(Title \*)

Date 11/24/2020  
 By John Zecca (Name \*)  
 EVP & Chief Legal Counsel  
 john.zecca@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 \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) Nasdaq ISE, LLC (“ISE” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to amend the Exchange’s Market Maker Plus program under Options 7, Section 3, “Regular Order Fees and Rebates.”

The Exchange originally filed the proposed pricing change on November 2, 2020 (SR-ISE-2020-36). On November 12, 2020, the Exchange withdrew SR-ISE-2020-36 and submitted SR-ISE-2020-35 on November 13, 2020. On November 24, 2020 the Exchange withdrew SR-ISE-2020-35 and submitted this replacement filing.

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 November 5, 2020. 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 Saccomandi Dunn  
Principal Associate General Counsel

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

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

Nasdaq, Inc.  
215-496-5692

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

a. Purpose

The Exchange proposes to amend the Market Maker Plus program under Options 7, Section 3, “Regular Order Fees and Rebates.” The purpose of the proposed rule change is to amend certain qualifications for Market Makers to achieve Market Maker Plus status in order to continue to incentivize Market Makers to add liquidity on ISE.

Background

As set forth in Options 7, Section 3 of the Pricing Schedule, the Exchange operates a Market Maker Plus program for regular orders in Select Symbols<sup>3</sup> and Non-Select Symbols<sup>4</sup> that provides the below tiered rebates to Market Makers<sup>5</sup> based on time spent quoting at the National Best Bid or National Best Offer (“NBBO”). This program is designed to reward Market Makers that contribute to market quality by maintaining tight markets in Select and Non-Select Symbols.

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**Select Symbols other than SPY, QQQ, IWM, AMZN, FB, and NVDA**

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**Market Maker Plus Tier (Specified Percentage)**

**Maker Rebate**

Tier 1 (80% to less than 85%)

(\$0.15)

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<sup>3</sup> “Select Symbols” are options overlying all symbols listed on the Nasdaq ISE that are in the Penny Interval Program. See Options 7, Section 1.

<sup>4</sup> “Non-Select Symbols” are options overlying all symbols excluding Select Symbols. See Options 7, Section 1.

<sup>5</sup> The term “Market Makers” refers to “Competitive Market Makers” and “Primary Market Makers” collectively. See Options 1, Section 1(a)(20).

Tier 2 (85% to less than 95%)	(\$0.18)
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Tier 3 (95% or greater)	(\$0.22)
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**SPY, QQQ, and IWM**

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<b>Market Maker Plus Tier (Specified Percentage)</b>	<b>Regular Maker Rebate</b>	<b>Linked Maker Rebate <sup>(9)</sup> <sup>(12)</sup></b>
Tier 1a (50% to less than 65%)	(\$0.00)	N/A
Tier 1b (65% to less than 80%)	(\$0.05)	N/A
Tier 2 (80% to less than 85%)	(\$0.18)	(\$0.15)
Tier 3 (85% to less than 90%)	(\$0.22)	(\$0.19)
Tier 4 (90% or greater)	(\$0.26)	(\$0.23)

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**AMZN, FB, and NVDA**

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<b>Market Maker Plus Tier (Specified Percentage)</b>	<b>Maker Rebate <sup>(14)</sup></b>
Tier 1 (70% to less than 85%)	(\$0.15)
Tier 2 (85% to less than 95%)	(\$0.18)
Tier 3 (95% or greater)	(\$0.22)

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

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<b>Market Maker Plus Tier (Specified Percentage)</b>	<b>Maker Fee / Rebate</b>
Tier 1 (80% to less than 90%)	\$0.50
Tier 2 (90% to less than 98%)	\$0.30
Tier 3 (98% or greater)	(\$0.40) <sup>(6)</sup>

Market Makers are evaluated each trading day for the percentage of time spent on the NBBO for qualifying series that expire in two successive thirty calendar day periods beginning on that trading day. A Market Maker Plus is a Market Maker who is on the NBBO a specified percentage of the time on average for the month based on daily

performance in the qualifying series for each of the two successive periods described above. Qualifying series are series trading between \$0.03 and \$3.00 (for options whose underlying stock's previous trading day's last sale price was less than or equal to \$100) and between \$0.10 and \$3.00 (for options whose underlying stock's previous trading day's last sale price was greater than \$100) in premium. If a Market Maker would qualify for a different Market Maker Plus tier in each of the two successive 30 calendar day periods, then the lower of the two Market Maker Plus tier rebates shall apply to all contracts.<sup>6</sup>

A Market Maker's worst quoting day each month for each of the two successive periods described above, on a per symbol basis, is excluded in calculating whether a Market Maker qualifies for this rebate.<sup>7</sup>

#### *Proposal*

The Exchange proposes to amend Tiers 1b, 2, 3 and Tier 4 of the Market Maker Plus qualifications for options overlying SPY, QQQ and IWM. Today, a Market Maker that is on the NBBO 65% to less than 80% of the time, on average for the month based on

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<sup>6</sup> Market Makers may enter quotes in a symbol using one or more unique, exchange assigned identifiers – i.e., badge/suffix combinations. Market Maker Plus status is calculated independently based on quotes entered in a symbol for each of the Market Maker's badge/suffix combinations, and the highest tier achieved for any badge/suffix combination quoting that symbol applies to executions across all badge/suffix combinations that the member uses to trade in that symbol. Only badge/suffix combinations quoting a minimum of ten trading days within the month will be used to determine whether the Market Maker Plus status has been met and the specific tier to be applied to the Market Maker's performance for that month.

<sup>7</sup> In addition, the Exchange may exclude from any member's monthly Market Maker Plus tier calculation any Unanticipated Event; provided that the Exchange will only remove the day for members that would have a lower time at the NBBO for the specified series with the day included. See Options 7, Section 1(a)(2) for the definition of "Unanticipated Event."

daily performance in the qualifying series, qualifies for the SPY, QQQ and IWM Tier 1b. Today, a Market Maker that is on the NBBO 80% to less than 85% of the time, on average for the month based on daily performance in the qualifying series, qualifies for the SPY, QQQ and IWM Tier 2. Today, a Market Maker that is on the NBBO 85% to less than 90% of the time, on average for the month based on daily performance in the qualifying series, qualifies for the SPY, QQQ and IWM Tier 3. Today, a Market Maker that is on the NBBO 90% or greater of the time, on average for the month based on daily performance in the qualifying series, qualifies for the SPY, QQQ and IWM Tier 4.

The Exchange proposes to amend the SPY, QQQ and IWM Market Maker Plus qualifications for Tiers 1b, 2, 3 and Tier 4 by adding an alternative means to qualify for these tiers. The Exchange proposes for SPY, QQQ and IWM Tier 1b, that in addition to the current qualification, a Market Maker that is on the NBBO over 50% of the time, on average for the month based on daily performance in the qualifying series, and adds liquidity in the qualifying symbol that is executed at a volume of greater than 0.10% of Customer Total Consolidated Volume<sup>8</sup> may also qualify for the SPY, QQQ and IWM Tier 1b. The Exchange proposes for SPY, QQQ and IWM Tier 2, that in addition to the current qualification, a Market Maker that is on the NBBO over 50% of the time, on average for the month based on daily performance in the qualifying series, and adds liquidity in the qualifying symbol that is executed at a volume of greater than 0.20% of

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<sup>8</sup> 0.10% of Customer Total Consolidated Volume is approximately 22,000 contracts per day. Customer Total Consolidated Volume means the total national volume cleared at The Options Clearing Corporation in the Customer range in equity and ETF options in that month. See Options 7, Section 1(b).

Customer Total Consolidated Volume<sup>9</sup> may also qualify for the SPY, QQQ and IWM Tier 2. The Exchange proposes for SPY, QQQ and IWM Tier 3, that in addition to the current qualification, a Market Maker that is on the NBBO over 50% of the time, on average for the month based on daily performance in the qualifying series, and adds liquidity in the qualifying symbol that is executed at a volume of greater than 0.25% of Customer Total Consolidated Volume<sup>10</sup> may also qualify for the SPY, QQQ and IWM Tier 3. Additionally, the Exchange proposes for SPY, QQQ and IWM Tier 4, that in addition to the current qualification, a Market Maker that is on the NBBO over 50% of the time, on average for the month based on daily performance in the qualifying series, and adds liquidity in the qualifying symbol that is executed at a volume of greater than 0.50% of Customer Total Consolidated Volume<sup>11</sup> may also qualify for the SPY, QQQ and IWM Tier 4.<sup>12</sup> The Exchange believes that these alternative qualifications for SPY, QQQ and IWM Tiers 1b, 2, 3 and 4 will provide greater depth of liquidity in SPY, QQQ and IWM, and, in turn, attract additional volume on ISE.

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<sup>9</sup> 0.20% of Customer Total Consolidated Volume is approximately 44,000 contracts per day.

<sup>10</sup> 0.25% of Customer Total Consolidated Volume is approximately 55,000 contracts per day.

<sup>11</sup> 0.50% of Customer Total Consolidated Volume is approximately 110,000 contracts per day.

<sup>12</sup> For example, if a Market Maker adds 40,000 contracts of liquidity in SPY on ISE and the average Customer Total Consolidated Volume for the month is 20,000,000 per day, then the Market Maker would have a percentage of 0.20% (40,000 divided by 20,000,000) of Customer Total Consolidated Volume and would qualify for Tier 2 in SPY and would be entitled to the \$0.18 per contract Regular Maker Rebate and the \$0.15 per contract Linked Maker Rebate. The Exchange arrives at 40,000 contracts by accumulating all executed volume that added liquidity (including quotes and orders) by a particular Market Maker Participant in SPY.

No rate changes are proposed for SPY, QQQ and IWM Tiers 1b, 2, 3 or 4 for the Regular Maker Rebate or the Linked Maker Rebate.

The Exchange also proposes to add a period at the end of Options 7, Section 3 after note 18 in the Pricing Schedule.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>13</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>14</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.

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 securities 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, the D.C. Circuit stated as follows: “[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

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<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(4) and (5).

exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers' ...."<sup>15</sup>

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."<sup>16</sup>

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options security 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. As such, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

The Exchange's proposal to amend the SPY, QQQ and IWM Tiers 1b, 2, 3 and

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<sup>15</sup> NetCoalition v. SEC, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

<sup>16</sup> Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) ("Regulation NMS Adopting Release").

Tier 4 qualifications by adding an alternative means<sup>17</sup> to qualify for these tiers is reasonable. With respect to SPY, QQQ and IWM, Market Makers may continue to qualify for Tier 1b, by being on the NBBO 65% to less than 80% of the time, on average for the month based on daily performance in the qualifying series. Likewise, Market Makers may continue to qualify for SPY, QQQ and IWM Tier 2, by being on the NBBO 80% to less than 85% of the time, on average for the month based on daily performance in the qualifying series. Market Makers may continue to qualify for SPY, QQQ and IWM Tier 3 by being on the NBBO 85% to less than 90% of the time, on average for the month based on daily performance in the qualifying series. Finally, Market Makers may continue to qualify for SPY, QQQ and IWM Tier 4 by being on the NBBO 90% or greater of the time, on average for the month based on daily performance in the qualifying series. In summary, Market Makers that met the SPY, QQQ and IWM Tier

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<sup>17</sup> The Exchange proposes for SPY, QQQ and IWM Tier 1b, that in addition to the current qualification, a Market Maker that is on the NBBO over 50% of the time, on average for the month based on daily performance in the qualifying series, and adds liquidity in the qualifying symbol that is executed at a volume of greater than 0.10% of Customer Total Consolidated Volume may also qualify for the SPY, QQQ and IWM Tier 1b. The Exchange proposes for SPY, QQQ and IWM Tier 2, that in addition to the current qualification, a Market Maker that is on the NBBO over 50% of the time, on average for the month based on daily performance in the qualifying series, and adds liquidity in the qualifying symbol that is executed at a volume of greater than 0.20% of Customer Total Consolidated Volume may also qualify for the SPY, QQQ and IWM Tier 2. The Exchange proposes for SPY, QQQ and IWM Tier 3, that in addition to the current qualification, a Market Maker that is on the NBBO over 50% of the time, on average for the month based on daily performance in the qualifying series, and adds liquidity in the qualifying symbol that is executed at a volume of greater than 0.25% of Customer Total Consolidated Volume may also qualify for the SPY, QQQ and IWM Tier 3. Additionally, the Exchange proposes for SPY, QQQ and IWM Tier 4, that in addition to the current qualification, a Market Maker that is on the NBBO over 50% of the time, on average for the month based on daily performance in the qualifying series, and adds liquidity in the qualifying symbol that is executed at a volume of greater than 0.50% of Customer Total Consolidated Volume may also qualify for the SPY, QQQ and IWM Tier 4.

1b, 2, 3 or 4 qualifications last month would continue to qualify for those tiers, provided each trading day they continued to spend the same percentage of time on the NBBO for qualifying series. With this proposal, the Exchange believes that these alternative qualifications for SPY, QQQ and IWM in Tiers 1b, 2, 3 and 4 will provide an opportunity for Market Makers to contribute greater depth of liquidity in SPY, QQQ and IWM on ISE, and, in turn, attract additional customer volume on ISE. The Exchange notes that the alternative qualifications, which require that Market Makers add liquidity in Customer volume, will incentivize Market Makers to tighten their quotes to execute against an increased number of orders, which benefits all Members who may interact with that interest on ISE's Order Book.

The Exchange's proposal to amend the SPY, QQQ and IWM Tiers 1b, 2, 3 and Tier 4 qualifications by adding an alternative means to qualify for these tiers is equitable and not unfairly discriminatory. The proposal would continue to require Market Makers who qualify for the Market Maker Plus program to quote significantly at the NBBO, thereby continuing to contribute to market quality in a meaningful way. All Market Makers will be subject to the same qualification criteria for Market Maker Plus. The Exchange also continues to believe that it is not unfairly discriminatory to offer rebates under this program to only Market Makers. Market Makers, and in particular, those Market Makers that participate in the Market Maker Plus Program and achieve Market Maker Plus status, add value through continuous quoting<sup>18</sup> and are subject to additional

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<sup>18</sup> See Options 2, Section 5.

requirements and obligations (such as quoting obligations<sup>19</sup>) that other market participants are not.

The Exchange will apply the proposed changes to SPY, QQQ, and IWM as they are three of the most actively traded symbols on ISE. The Exchange believes that providing an alternative means for Market Makers to qualify for Market Maker Plus tiers will incentivize additional liquidity in these three names, which will have a beneficial impact on market quality on the Exchange. Further, the Exchange believes that the proposed new Tier 1b, 2, 3 and 4 qualifications for SPY, QQQ, and IWM will continue to require Market Makers to quote at the NBBO for a significant percentage of time in order to glean the benefits of the associated incentives. For the foregoing reasons, the Exchange believes that its proposal will further encourage Market Makers to maintain tight markets in SPY, QQQ, and IWM, thereby increasing liquidity and attracting additional order flow to the Exchange and, will benefit all market participants in the quality of order interaction.

#### 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.

##### Inter-market Competition

The proposal does not impose an undue burden on intermarket competition. The Exchange believes its proposal remains competitive with other options markets and will offer market participants with another choice of where to transact options. The Exchange notes that it operates in a highly competitive market in which market participants can

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<sup>19</sup> See Options 2, Section 4 and Options 3, Section 8(c).

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 that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

#### Intra-market Competition

The Exchange's proposal to amend the SPY, QQQ and IWM Tiers 1b, 2, 3 and Tier 4 qualifications by adding an alternative means<sup>20</sup> to qualify for these tiers does not impose an undue burden on competition. The proposal would continue to require Market Makers who qualify for the Market Maker Plus program to quote significantly at the NBBO, thereby continuing to contribute to market quality in a meaningful way. All Market Makers will be subject to the same qualification criteria for Market Maker Plus. The Exchange also continues to believe that it is not unfairly discriminatory to offer rebates under this program to only Market Makers. Market Makers, and in particular, those Market Makers that participate in the Market Maker Plus Program and achieve Market Maker Plus status, add value through continuous quoting<sup>21</sup> and are subject to

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<sup>20</sup> See note 17 above.

<sup>21</sup> See Options 2, Section 5.

additional requirements and obligations (such as quoting obligations<sup>22</sup>) that other market participants are not.

The Exchange will apply the proposed changes to SPY, QQQ, and IWM as they are three of the most actively traded symbols on ISE. The Exchange believes that providing an alternative means for Market Makers to qualify for Market Maker Plus tiers will incentivize additional liquidity in these three names which will have a beneficial impact on market quality on the Exchange. Further, the Exchange believes that the proposed new Tier 1b, 2, 3 and 4 qualifications for SPY, QQQ, and IWM will continue to require Market Makers to quote at the NBBO for a significant percentage of time in order to glean the benefits of the associated incentives. For the foregoing reasons, the Exchange believes that its proposal will further encourage Market Makers to maintain tight markets in SPY, QQQ, and IWM, thereby increasing liquidity and attracting additional order flow to the Exchange, which will benefit all market participants in the quality of order interaction.

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>23</sup> the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-

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<sup>22</sup> See Options 2, Section 4 and Options 3, Section 8(c).

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.

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_ ; File No. SR-ISE-2020-40)

November \_\_, 2020

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to amend the Exchange’s Market Maker Plus program under Options 7, Section 3, “Regular Order Fees and Rebates.”

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 November 24, 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 Market Maker Plus program under Options 7, Section 3, “Regular Order Fees and Rebates.”

The Exchange originally filed the proposed pricing change on November 2, 2020 (SR-ISE-2020-36). On November 12, 2020, the Exchange withdrew SR-ISE-2020-36 and submitted SR-ISE-2020-35 on November 13, 2020. On November 24, 2020 the Exchange withdrew SR-ISE-2020-35 and submitted this replacement filing.

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

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

The text of the proposed rule change is available on the Exchange's Website at <https://listingcenter.nasdaq.com/rulebook/ise/rules>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at 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 amend the Market Maker Plus program under Options 7, Section 3, "Regular Order Fees and Rebates." The purpose of the proposed rule change is to amend certain qualifications for Market Makers to achieve Market Maker Plus status in order to continue to incentivize Market Makers to add liquidity on ISE.

Background

As set forth in Options 7, Section 3 of the Pricing Schedule, the Exchange operates a Market Maker Plus program for regular orders in Select Symbols<sup>3</sup> and Non-Select Symbols<sup>4</sup> that provides the below tiered rebates to Market Makers<sup>5</sup> based on time

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<sup>3</sup> "Select Symbols" are options overlying all symbols listed on the Nasdaq ISE that are in the Penny Interval Program. See Options 7, Section 1.

<sup>4</sup> "Non-Select Symbols" are options overlying all symbols excluding Select Symbols. See Options 7, Section 1.

spent quoting at the National Best Bid or National Best Offer (“NBBO”). This program is designed to reward Market Makers that contribute to market quality by maintaining tight markets in Select and Non-Select Symbols.

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**Select Symbols other than SPY, QQQ, IWM, AMZN, FB, and NVDA**

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<b>Market Maker Plus Tier (Specified Percentage)</b>	<b>Maker Rebate</b>
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Tier 1 (80% to less than 85%)	(\$0.15)
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Tier 2 (85% to less than 95%)	(\$0.18)
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Tier 3 (95% or greater)	(\$0.22)
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**SPY, QQQ, and IWM**

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<b>Market Maker Plus Tier (Specified Percentage)</b>	<b>Regular Maker Rebate</b>	<b>Linked Maker Rebate <sup>(9)</sup> <sup>(12)</sup></b>
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Tier 1a (50% to less than 65%)	(\$0.00)	N/A
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Tier 1b (65% to less than 80%)	(\$0.05)	N/A
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Tier 2 (80% to less than 85%)	(\$0.18)	(\$0.15)
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Tier 3 (85% to less than 90%)	(\$0.22)	(\$0.19)
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Tier 4 (90% or greater)	(\$0.26)	(\$0.23)
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**AMZN, FB, and NVDA**

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<b>Market Maker Plus Tier (Specified Percentage)</b>	<b>Maker Rebate <sup>(14)</sup></b>
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Tier 1 (70% to less than 85%)	(\$0.15)
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Tier 2 (85% to less than 95%)	(\$0.18)
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Tier 3 (95% or greater)	(\$0.22)
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<sup>5</sup> The term “Market Makers” refers to “Competitive Market Makers” and “Primary Market Makers” collectively. See Options 1, Section 1(a)(20).

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

<b>Market Maker Plus Tier (Specified Percentage)</b>	<b>Maker Fee / Rebate</b>
Tier 1 (80% to less than 90%)	\$0.50
Tier 2 (90% to less than 98%)	\$0.30
Tier 3 (98% or greater)	(\$0.40) <sup>(6)</sup>

Market Makers are evaluated each trading day for the percentage of time spent on the NBBO for qualifying series that expire in two successive thirty calendar day periods beginning on that trading day. A Market Maker Plus is a Market Maker who is on the NBBO a specified percentage of the time on average for the month based on daily performance in the qualifying series for each of the two successive periods described above. Qualifying series are series trading between \$0.03 and \$3.00 (for options whose underlying stock's previous trading day's last sale price was less than or equal to \$100) and between \$0.10 and \$3.00 (for options whose underlying stock's previous trading day's last sale price was greater than \$100) in premium. If a Market Maker would qualify for a different Market Maker Plus tier in each of the two successive 30 calendar day periods, then the lower of the two Market Maker Plus tier rebates shall apply to all contracts.<sup>6</sup>

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<sup>6</sup> Market Makers may enter quotes in a symbol using one or more unique, exchange assigned identifiers – i.e., badge/suffix combinations. Market Maker Plus status is calculated independently based on quotes entered in a symbol for each of the Market Maker's badge/suffix combinations, and the highest tier achieved for any badge/suffix combination quoting that symbol applies to executions across all badge/suffix combinations that the member uses to trade in that symbol. Only badge/suffix combinations quoting a minimum of ten trading days within the month will be used to determine whether the Market Maker Plus status has been met and the specific tier to be applied to the Market Maker's performance for that month.

A Market Maker's worst quoting day each month for each of the two successive periods described above, on a per symbol basis, is excluded in calculating whether a Market Maker qualifies for this rebate.<sup>7</sup>

*Proposal*

The Exchange proposes to amend Tiers 1b, 2, 3 and Tier 4 of the Market Maker Plus qualifications for options overlying SPY, QQQ and IWM. Today, a Market Maker that is on the NBBO 65% to less than 80% of the time, on average for the month based on daily performance in the qualifying series, qualifies for the SPY, QQQ and IWM Tier 1b. Today, a Market Maker that is on the NBBO 80% to less than 85% of the time, on average for the month based on daily performance in the qualifying series, qualifies for the SPY, QQQ and IWM Tier 2. Today, a Market Maker that is on the NBBO 85% to less than 90% of the time, on average for the month based on daily performance in the qualifying series, qualifies for the SPY, QQQ and IWM Tier 3. Today, a Market Maker that is on the NBBO 90% or greater of the time, on average for the month based on daily performance in the qualifying series, qualifies for the SPY, QQQ and IWM Tier 4.

The Exchange proposes to amend the SPY, QQQ and IWM Market Maker Plus qualifications for Tiers 1b, 2, 3 and Tier 4 by adding an alternative means to qualify for these tiers. The Exchange proposes for SPY, QQQ and IWM Tier 1b, that in addition to the current qualification, a Market Maker that is on the NBBO over 50% of the time, on average for the month based on daily performance in the qualifying series, and adds

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<sup>7</sup> In addition, the Exchange may exclude from any member's monthly Market Maker Plus tier calculation any Unanticipated Event; provided that the Exchange will only remove the day for members that would have a lower time at the NBBO for the specified series with the day included. See Options 7, Section 1(a)(2) for the definition of "Unanticipated Event."

liquidity in the qualifying symbol that is executed at a volume of greater than 0.10% of Customer Total Consolidated Volume<sup>8</sup> may also qualify for the SPY, QQQ and IWM Tier 1b. The Exchange proposes for SPY, QQQ and IWM Tier 2, that in addition to the current qualification, a Market Maker that is on the NBBO over 50% of the time, on average for the month based on daily performance in the qualifying series, and adds liquidity in the qualifying symbol that is executed at a volume of greater than 0.20% of Customer Total Consolidated Volume<sup>9</sup> may also qualify for the SPY, QQQ and IWM Tier 2. The Exchange proposes for SPY, QQQ and IWM Tier 3, that in addition to the current qualification, a Market Maker that is on the NBBO over 50% of the time, on average for the month based on daily performance in the qualifying series, and adds liquidity in the qualifying symbol that is executed at a volume of greater than 0.25% of Customer Total Consolidated Volume<sup>10</sup> may also qualify for the SPY, QQQ and IWM Tier 3. Additionally, the Exchange proposes for SPY, QQQ and IWM Tier 4, that in addition to the current qualification, a Market Maker that is on the NBBO over 50% of the time, on average for the month based on daily performance in the qualifying series, and adds liquidity in the qualifying symbol that is executed at a volume of greater than

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<sup>8</sup> 0.10% of Customer Total Consolidated Volume is approximately 22,000 contracts per day. Customer Total Consolidated Volume means the total national volume cleared at The Options Clearing Corporation in the Customer range in equity and ETF options in that month. See Options 7, Section 1(b).

<sup>9</sup> 0.20% of Customer Total Consolidated Volume is approximately 44,000 contracts per day.

<sup>10</sup> 0.25% of Customer Total Consolidated Volume is approximately 55,000 contracts per day.

0.50% of Customer Total Consolidated Volume<sup>11</sup> may also qualify for the SPY, QQQ and IWM Tier 4.<sup>12</sup> The Exchange believes that these alternative qualifications for SPY, QQQ and IWM Tiers 1b, 2, 3 and 4 will provide greater depth of liquidity in SPY, QQQ and IWM, and, in turn, attract additional volume on ISE.

No rate changes are proposed for SPY, QQQ and IWM Tiers 1b, 2, 3 or 4 for the Regular Maker Rebate or the Linked Maker Rebate.

The Exchange also proposes to add a period at the end of Options 7, Section 3 after note 18 in the Pricing Schedule.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>13</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>14</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.

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<sup>11</sup> 0.50% of Customer Total Consolidated Volume is approximately 110,000 contracts per day.

<sup>12</sup> For example, if a Market Maker adds 40,000 contracts of liquidity in SPY on ISE and the average Customer Total Consolidated Volume for the month is 20,000,000 per day, then the Market Maker would have a percentage of 0.20% (40,000 divided by 20,000,000) of Customer Total Consolidated Volume and would qualify for Tier 2 in SPY and would be entitled to the \$0.18 per contract Regular Maker Rebate and the \$0.15 per contract Linked Maker Rebate. The Exchange arrives at 40,000 contracts by accumulating all executed volume that added liquidity (including quotes and orders) by a particular Market Maker Participant in SPY.

<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(4) and (5).

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 securities 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, the D.C. Circuit stated as follows: “[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’ ....”<sup>15</sup>

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>16</sup>

Numerous indicia demonstrate the competitive nature of this market. For

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<sup>15</sup> NetCoalition v. SEC, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

<sup>16</sup> Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

example, clear substitutes to the Exchange exist in the market for options security 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. As such, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

The Exchange's proposal to amend the SPY, QQQ and IWM Tiers 1b, 2, 3 and Tier 4 qualifications by adding an alternative means<sup>17</sup> to qualify for these tiers is reasonable. With respect to SPY, QQQ and IWM, Market Makers may continue to qualify for Tier 1b, by being on the NBBO 65% to less than 80% of the time, on average for the month based on daily performance in the qualifying series. Likewise, Market

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<sup>17</sup> The Exchange proposes for SPY, QQQ and IWM Tier 1b, that in addition to the current qualification, a Market Maker that is on the NBBO over 50% of the time, on average for the month based on daily performance in the qualifying series, and adds liquidity in the qualifying symbol that is executed at a volume of greater than 0.10% of Customer Total Consolidated Volume may also qualify for the SPY, QQQ and IWM Tier 1b. The Exchange proposes for SPY, QQQ and IWM Tier 2, that in addition to the current qualification, a Market Maker that is on the NBBO over 50% of the time, on average for the month based on daily performance in the qualifying series, and adds liquidity in the qualifying symbol that is executed at a volume of greater than 0.20% of Customer Total Consolidated Volume may also qualify for the SPY, QQQ and IWM Tier 2. The Exchange proposes for SPY, QQQ and IWM Tier 3, that in addition to the current qualification, a Market Maker that is on the NBBO over 50% of the time, on average for the month based on daily performance in the qualifying series, and adds liquidity in the qualifying symbol that is executed at a volume of greater than 0.25% of Customer Total Consolidated Volume may also qualify for the SPY, QQQ and IWM Tier 3. Additionally, the Exchange proposes for SPY, QQQ and IWM Tier 4, that in addition to the current qualification, a Market Maker that is on the NBBO over 50% of the time, on average for the month based on daily performance in the qualifying series, and adds liquidity in the qualifying symbol that is executed at a volume of greater than 0.50% of Customer Total Consolidated Volume may also qualify for the SPY, QQQ and IWM Tier 4.

Makers may continue to qualify for SPY, QQQ and IWM Tier 2, by being on the NBBO 80% to less than 85% of the time, on average for the month based on daily performance in the qualifying series. Market Makers may continue to qualify for SPY, QQQ and IWM Tier 3 by being on the NBBO 85% to less than 90% of the time, on average for the month based on daily performance in the qualifying series. Finally, Market Makers may continue to qualify for SPY, QQQ and IWM Tier 4 by being on the NBBO 90% or greater of the time, on average for the month based on daily performance in the qualifying series. In summary, Market Makers that met the SPY, QQQ and IWM Tier 1b, 2, 3 or 4 qualifications last month would continue to qualify for those tiers, provided each trading day they continued to spend the same percentage of time on the NBBO for qualifying series. With this proposal, the Exchange believes that these alternative qualifications for SPY, QQQ and IWM in Tiers 1b, 2, 3 and 4 will provide an opportunity for Market Makers to contribute greater depth of liquidity in SPY, QQQ and IWM on ISE, and, in turn, attract additional customer volume on ISE. The Exchange notes that the alternative qualifications, which require that Market Makers add liquidity in Customer volume, will incentivize Market Makers to tighten their quotes to execute against an increased number of orders, which benefits all Members who may interact with that interest on ISE's Order Book.

The Exchange's proposal to amend the SPY, QQQ and IWM Tiers 1b, 2, 3 and Tier 4 qualifications by adding an alternative means to qualify for these tiers is equitable and not unfairly discriminatory. The proposal would continue to require Market Makers who qualify for the Market Maker Plus program to quote significantly at the NBBO, thereby continuing to contribute to market quality in a meaningful way. All Market

Makers will be subject to the same qualification criteria for Market Maker Plus. The Exchange also continues to believe that it is not unfairly discriminatory to offer rebates under this program to only Market Makers. Market Makers, and in particular, those Market Makers that participate in the Market Maker Plus Program and achieve Market Maker Plus status, add value through continuous quoting<sup>18</sup> and are subject to additional requirements and obligations (such as quoting obligations<sup>19</sup>) that other market participants are not.

The Exchange will apply the proposed changes to SPY, QQQ, and IWM as they are three of the most actively traded symbols on ISE. The Exchange believes that providing an alternative means for Market Makers to qualify for Market Maker Plus tiers will incentivize additional liquidity in these three names, which will have a beneficial impact on market quality on the Exchange. Further, the Exchange believes that the proposed new Tier 1b, 2, 3 and 4 qualifications for SPY, QQQ, and IWM will continue to require Market Makers to quote at the NBBO for a significant percentage of time in order to glean the benefits of the associated incentives. For the foregoing reasons, the Exchange believes that its proposal will further encourage Market Makers to maintain tight markets in SPY, QQQ, and IWM, thereby increasing liquidity and attracting additional order flow to the Exchange and, will benefit all market participants in the quality of order interaction.

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

The Exchange does not believe that the proposed rule change will impose any

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<sup>18</sup> See Options 2, Section 5.

<sup>19</sup> See Options 2, Section 4 and Options 3, Section 8(c).

burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

#### Inter-market Competition

The proposal does not impose an undue burden on inter-market competition. The Exchange believes its proposal remains competitive with other options markets and will offer market participants with another choice of where to transact options. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

#### Intra-market Competition

The Exchange's proposal to amend the SPY, QQQ and IWM Tiers 1b, 2, 3 and Tier 4 qualifications by adding an alternative means<sup>20</sup> to qualify for these tiers does not impose an undue burden on competition. The proposal would continue to require Market Makers who qualify for the Market Maker Plus program to quote significantly at the NBBO, thereby continuing to contribute to market quality in a meaningful way. All Market Makers will be subject to the same qualification criteria for Market Maker Plus.

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<sup>20</sup> See note 17 above.

The Exchange also continues to believe that it is not unfairly discriminatory to offer rebates under this program to only Market Makers. Market Makers, and in particular, those Market Makers that participate in the Market Maker Plus Program and achieve Market Maker Plus status, add value through continuous quoting<sup>21</sup> and are subject to additional requirements and obligations (such as quoting obligations<sup>22</sup>) that other market participants are not.

The Exchange will apply the proposed changes to SPY, QQQ, and IWM as they are three of the most actively traded symbols on ISE. The Exchange believes that providing an alternative means for Market Makers to qualify for Market Maker Plus tiers will incentivize additional liquidity in these three names which will have a beneficial impact on market quality on the Exchange. Further, the Exchange believes that the proposed new Tier 1b, 2, 3 and 4 qualifications for SPY, QQQ, and IWM will continue to require Market Makers to quote at the NBBO for a significant percentage of time in order to glean the benefits of the associated incentives. For the foregoing reasons, the Exchange believes that its proposal will further encourage Market Makers to maintain tight markets in SPY, QQQ, and IWM, thereby increasing liquidity and attracting additional order flow to the Exchange, which will benefit all market participants in the quality of order interaction.

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.

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<sup>21</sup> See Options 2, Section 5.

<sup>22</sup> See Options 2, Section 4 and Options 3, Section 8(c).

### 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>23</sup> At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

### IV. Solicitation of Comments

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

#### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-ISE-2020-40 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-2020-40. This file number should be included on the subject line if e-mail is used. To help the Commission process

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<sup>23</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-ISE-2020-40 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>24</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>24</sup> 17 CFR 200.30-3(a)(12).

**EXHIBIT 5**

*New text is underlined>; deleted text is in brackets.*

**NASDAQ ISE, LLC Rules**

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**Options Rules**

\* \* \* \* \*

**Options 7 Pricing Schedule**

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**Section 3. 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)</sup></b>	<b>Fee for Crossing PIM Orders<sup>(1) (2)</sup></b>	<b>Fee for Responses to Crossing Orders Except PIM Orders</b>	<b>Fee for Responses to PIM Orders</b>	<b>Facilitation and Break-up Rebate<sup>(4)</sup></b>
Market Maker <sup>(8)</sup>	\$0.11 <sup>(5)</sup> (10) (11)	\$0.45	\$0.20	\$0.10	\$0.50	\$0.50	N/A
Non-Nasdaq ISE Market Maker (FarMM)	\$0.11 <sup>(11)</sup>	\$0.46	\$0.20	\$0.10	\$0.50	\$0.50	(\$0.15)
Firm Proprietary / Broker-Dealer	\$0.11 <sup>(11)</sup>	\$0.46	\$0.20	\$0.10	\$0.50	\$0.50	(\$0.15)
Professional Customer	\$0.11 <sup>(11)</sup>	\$0.46	\$0.20 <sup>(16)</sup>	\$0.10	\$0.50	\$0.50	(\$0.15)
Priority Customer	\$0.00	\$0.41	\$0.00	\$0.00	\$0.50	\$0.50	(\$0.15)

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

<b>Market Participant</b>	<b>Maker Rebate / Fee<sup>(17)</sup></b>	<b>Taker Fee<sup>(17)</sup></b>	<b>Fee for Crossing Orders</b>	<b>Fee for PIM Orders</b>	<b>Fee for Responses to</b>	<b>Fee for Responses</b>	<b>Facilitation and Solicitation</b>
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			Except PIM Orders <sup>(1)</sup> (2)	<sup>(1)</sup> <sup>(2)</sup> <sup>(13)</sup>	Crossing Orders Except PIM Orders	to PIM Orders	Break-up Rebate <sup>(4)</sup>
Market Maker <sup>(8)</sup>	\$0.70 <sup>(5)</sup>	\$0.90	\$0.20	\$0.10	\$1.10	\$1.10	N/A
Non- Nasdaq ISE Market Maker (FarMM)	\$0.70	\$0.90	\$0.20	\$0.10	\$1.10	\$1.10	(\$0.15)
Firm Proprietary / Broker- Dealer	\$0.70	\$0.90	\$0.20	\$0.10	\$1.10	\$1.10	(\$0.15)
Professional Customer	\$0.70	\$0.90	\$0.20 <sup>(16)</sup>	\$0.10	\$1.10	\$1.10	(\$0.15)
Priority Customer	(\$0.86) <sup>(15)</sup> (18)	\$0.00	\$0.00	\$0.00	\$1.10	\$1.10	(\$0.15)

1. Firm Proprietary contracts traded are subject to the Crossing Fee Cap, as provided in Options 7, Section 6.H.
2. Fees apply to the originating and contra order.
3. Non-Priority Customer orders will be charged a taker fee of \$1.10 per contract for trades executed against a Priority Customer. Priority Customer orders will be charged a taker fee of \$0.86 per contract for trades executed against a Priority Customer.
4. Rebate provided for contracts that are submitted to the Facilitation and Solicited Order Mechanisms that do not trade with their contra order except when those contracts trade against pre-existing orders and quotes on the Exchange's order books. The fee for Crossing Orders is applied to any contracts for which a rebate is provided.
5. 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 below, and will instead be assessed the below fees or rebates based on the applicable tier for which they qualify.

Market Makers are evaluated each trading day for the percentage of time spent on the National Best Bid or National Best Offer ("NBBO") for qualifying series that expire in two successive thirty calendar day periods beginning on that trading day. A Market Maker Plus is a Market Maker who is on the NBBO a specified percentage of the time on average for the month based on daily performance in the qualifying series for each of the two

successive periods described above. Qualifying series are series trading between \$0.03 and \$3.00 (for options whose underlying stock's previous trading day's last sale price was less than or equal to \$100) and between \$0.10 and \$3.00 (for options whose underlying stock's previous trading day's last sale price was greater than \$100) in premium. If a Market Maker would qualify for a different Market Maker Plus tier in each of the two successive periods described above, then the lower of the two Market Maker Plus tier fees or rebates shall apply to all contracts.

Market Makers may enter quotes in a symbol using one or more unique, exchange assigned identifiers - i.e., badge/suffix combinations. Market Maker Plus status is calculated independently based on quotes entered in a symbol for each of the Market Maker's badge/suffix combinations, and the highest tier achieved for any badge/suffix combination quoting that symbol applies to executions across all badge/suffix combinations that the member uses to trade in that symbol. Only badge/suffix combinations quoting a minimum of ten trading days within the month will be used to determine whether the Market Maker Plus status has been met and the specific tier to be applied to the Market Maker's performance for that month.

A Market Maker's worst quoting day each month for each of the two successive periods described above, on a per symbol basis, will be excluded in calculating whether a Market Maker qualifies for this fee or rebate. A Market Maker who qualifies for Market Maker Plus Tiers 2 or higher in at least four of the previous six months will be eligible to receive a reduced Tier 2 incentive in a given month where the Market Maker does not qualify for any Market Maker Plus tiers. For Select Symbols, this rebate will be the applicable Tier 2 rebate reduced by \$0.08 per contract. For Non-Select Symbols, this fee will be the Tier 2 fee increased by \$0.08 per contract.

The Exchange may exclude from any member's monthly Market Maker Plus tier calculation any Unanticipated Event; provided that the Exchange will only remove the day for members that would have a lower time at the NBBO for the specified series with the day included.

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**Select Symbols other than SPY, QQQ, IWM, AMZN, FB, and NVDA**

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<b>Market Maker Plus Tier (Specified Percentage)</b>	<b>Maker Rebate</b>
Tier 1 (80% to less than 85%)	(\$0.15)
Tier 2 (85% to less than 95%)	(\$0.18)
Tier 3 (95% or greater)	(\$0.22)

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**SPY, QQQ, and IWM**


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<b>Market Maker Plus Tier (Specified Percentage)</b>	<b>Regular Maker Rebate</b>	<b>Linked Maker Rebate (9)(12)</b>
Tier 1a (50% to less than 65%)	(\$0.00)	N/A
Tier 1b (65% to less than 80%) <u>or (over 50% and adds liquidity in the qualifying symbol that is executed at a volume of greater than 0.10% of Customer Total Consolidated Volume)</u>	(\$0.05)	N/A
Tier 2 (80% to less than 85%) <u>or (over 50% and adds liquidity in the qualifying symbol that is executed at a volume of greater than 0.20% of Customer Total Consolidated Volume)</u>	(\$0.18)	(\$0.15)
Tier 3 (85% to less than 90%) <u>or (over 50% and adds liquidity in the qualifying symbol that is executed at a volume of greater than 0.25% of Customer Total Consolidated Volume)</u>	(\$0.22)	(\$0.19)
Tier 4 (90% or greater) <u> or (over 50% and adds liquidity in the qualifying symbol that is executed at a volume of greater than 0.50% of Customer Total Consolidated Volume)</u>	(\$0.26)	(\$0.23)

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**AMZN, FB, and NVDA**


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<b>Market Maker Plus Tier (Specified Percentage)</b>	<b>Maker Rebate <sup>(14)</sup></b>
Tier 1 (70% to less than 85%)	(\$0.15)

Tier 2 (85% to less than 95%)	(\$0.18)
Tier 3 (95% or greater)	(\$0.22)
<b>Non-Select Symbols (excluding Index Options)<sup>(7)</sup></b>	
<b>Market Maker Plus Tier (Specified Percentage)</b>	<b>Maker Fee / Rebate</b>
Tier 1 (80% to less than 90%)	\$0.50
Tier 2 (90% to less than 98%)	\$0.30
Tier 3 (98% or greater)	(\$0.40) <sup>(6)</sup>

6. This rebate will be provided if the qualifying Market Maker trades against non-Priority Customer orders. Qualifying Market Makers that trade against Priority Customer orders will be charged a Market Maker Plus Tier 3 fee of \$0.10 per contract instead of receiving the Tier 3 rebate.
7. For all executions in regular NDX and NQX orders, the applicable index options fees in Section 5 will apply.
8. This fee applies to Market Maker orders sent to the Exchange by Electronic Access Members.
9. The following symbols are linked for purposes of the linked maker rebate: (1) SPY and QQQ, and (2) SPY and IWM. Market Makers that qualify for Market Maker Plus Tiers 2-4 in note 5 above for executions in SPY, QQQ, or IWM may be eligible for a linked maker rebate in a linked symbol in addition to the regular maker rebate for the applicable tier. Linked maker rebate applies to executions in SPY, QQQ, or IWM if the Market Maker does not achieve the applicable tier in that symbol but achieves the tier (i.e., any of Market Maker Plus Tiers 2-4) for any badge/suffix combination in the other linked symbol, in which case the higher tier achieved applies to both symbols. If a Market Maker would qualify for a linked maker rebate in SPY based on the tier achieved in QQQ and the tier achieved in IWM then the higher of the two linked maker rebates will be applied to SPY. The regular maker rebate will be provided in the symbol that qualifies the Market Maker for the higher tier based on percentage of time at the NBBO.

10. There will be no fee charged or rebate provided when trading against non-Priority Customer complex orders that leg into the regular order book.
11. \$0.25 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. Notwithstanding the foregoing, Market Makers that qualify for Market Maker Plus in Select Symbols will pay a \$0.15 per contract fee in the symbols for which they qualify for Market Maker Plus when trading against Priority Customer Complex Orders of less than 50 contracts in Select Symbols that leg into the regular order book. Further, Market Makers that qualify for Market Maker Plus in Select Symbols will not pay any fee nor receive any rebate in the symbols for which they qualify for Market Maker Plus when trading against Priority Customer Complex Orders of 50 contracts or more in Select Symbols that leg into the regular order book.
12. Market Makers that achieve Priority Customer Complex Tiers 7 - 9 in Section 4 will receive an additional \$0.01 per contract rebate on executions in SPY, QQQ, or IWM that qualify for the linked maker rebate program pursuant to note 9 above, in addition to the linked maker rebate tiers 2 - 4.
13. Other than for Priority Customer orders, this fee is \$0.05 per contract for orders executed by Members that execute an ADV of 7,500 or more contracts in the PIM in a given month. Members that execute an ADV of 12,500 or more contracts in the PIM will be charged \$0.02 per contract. The discounted fees are applied retroactively to all eligible PIM volume in that month once the threshold has been reached.
14. Market Makers that qualify for Market Maker Plus Tiers 1-3 in note 5 above for executions in two out of the three symbols AMZN, FB, or NVDA will be eligible for a maker rebate in the third symbol, in addition to the maker rebate for the applicable tier in the other two symbols. The maker rebate will apply to executions in AMZN, FB, or NVDA if the Market Maker does not achieve the applicable tier in that symbol but achieves the tier (i.e., any of Market Maker Plus Tiers 1-3) for any badge/suffix combination in the other two symbols. If a Market Maker would qualify for different Market Maker Plus Tiers 1-3 in two symbols, then the lower of the two maker rebates will be applied to the third symbol (e.g., Market Maker Plus qualification in Tier 1 and Tier 2 across two symbols would earn Market Maker Plus Tier 1 in the third symbol). If all three symbols separately achieve any of Market Maker Plus Tiers 1-3, the symbol that achieves the tier with the lowest maker rebate will instead receive the same maker rebate as the symbol that achieved the next lowest tier.
15. Members that execute more than 0.06% of Regular Order Non-Select Symbol Priority Customer Volume (excluding Crossing Orders and Responses to Crossing Orders) calculated as a percentage of Customer Total Consolidated Volume per day in a given month will receive an additional rebate of \$0.14 per contract.

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 that initiates a Flash Order will be assessed the appropriate Taker Fee in Section 3. All market participant responses to Flash Orders in Select Symbols will be paid/assessed the appropriate Maker Rebate/Fee in Section 3. Responses to Flash Orders in Non-Select Symbols will be \$0.25 per contract for non-Priority Customers and \$0.00 for Priority Customers.
18. There will be no fee charged or rebate provided in Non-Select Symbols when trading against Priority Customer Complex Orders that leg into the regular order book.

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